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## BILL OF COMPLAINT.

Filed December 13, 1926.

### In Chancery of New Jersey

To his Honor, Edwin Robert Walker, Chancellor 10  
of the State of New Jersey:

The complainant, Lillian E. Pfender, of Glen Ridge, Essex County, New Jersey, respectfully shows that:

1. On May 15, 1902, she was lawfully married to her present husband, Carl Depew Pfender, at Grace Episcopal Church, in the City of Plainfield, Union County, New Jersey, by the Rev. Dr. E. M. Rodman, a minister of the Gospel. 20

2. After her said marriage complainant and defendant, her said husband, went to reside at Montclair, Essex County, New Jersey, and subsequently went to reside at 364 Ridgewood avenue, Glen Ridge, Essex County, New Jersey, where they have resided for about seven years. Complainant and defendant have cohabited together from the time of said marriage and during the past seven years, until the abandonment by the defendant of the complainant, as herein- 30  
after set forth, at 364 Ridgewood avenue, Glen Ridge, New Jersey.

3. No children have been born to complainant and her said husband as the fruit of said marriage.

4. From the time of her marriage complainant has never received any money for her own personal use, until about the year 1923, when defendant gave her \$10.00 per month to spend for 40

*Bill of Complaint.*

herself. Defendant, however, paid for what clothes he permitted complainant to buy, all of which purchases were subject to his approval, from time to time, he stating to the complainant that she did not need any money. In May, 1926, defendant promised to pay complainant \$100.00 per month if complainant would go to Lake Champlain and there superintend the construction of a summer home which defendant was building, and complainant did go to Lake Champlain and did receive \$100.00 per month during the months of May, June and July, 1926, when complainant returned to Glen Ridge.

5. On October 1, 1926, defendant, without any justifiable cause, abandoned complainant and separated himself from her and refused and neglected, and still refuses and neglects to maintain and provide for her.

6. Complainant is now dependent entirely upon her husband for support. She has no money and she is unable to work.

7. Defendant is possessed of a large amount of real and personal property. He is the owner of the house at 364 Ridgewood avenue, Glen Ridge, N. J., in which complainant is living at the present time, worth over \$100,000; he is the owner of property at Westport, Lake Champlain, N. Y., which, up to this time, complainant is informed and believes, and therefore charges, has cost \$50,000 and is yet unfinished; he is the owner of a one-third interest of the estate of his mother, the late Eliza Depew Pfender, his undivided share amounting, as complainant is informed and believes, and therefore charges, to more than \$35,000; he is a partner, and has a one-third interest in the partnership conduct-

*Bill of Complaint.*

ing business under the firm name and style of H. P. McKinney & Co., at 80 Fifth avenue, New York, N. Y., and complainant is informed and believes, and therefore charges, that the business conducted by the said partnership is that of a wholesale woolen commission merchants, and that the income of the defendant from the said business is not less than \$150,000 per year, and is more than the said amount, and complainant is informed and believes, and therefore charges, is upwards of \$300,000 per year.

Up to the time of his desertion of complainant, defendant employed three servants in the house at Glen Ridge, at a cost of not less than \$400 per month, a laundress at a cost of not less than \$50.00 per month; a gardener at a cost of \$150 per month, and a cook and butler at a total of \$200 per month; that he owns and maintains two Cadillac automobiles and a horse for his own use, and complainant is informed and believes, and therefore charges, that defendant has paid in the maintenance of his home and servants, as hereinabove set forth, between \$55,000 and \$100,000 each year. Complainant is not able to state exactly the amount of defendant's income, but says that he is amply able to earn \$300,000 per year by his personal attention to his business, and is abundantly able to maintain and support her in a manner suitable to their position.

Complainant is without adequate remedy at law and therefore prays:

1. That Carl Depew Pfender, who is the defendant in this suit, may answer this bill of complaint, and each statement therein made.

*Bill of Complaint.*

2. That the defendant may be ordered and decreed to provide such suitable support and maintenance to be paid and provided by him, or made out of his property, for complainant, and for such times as the nature of the case and the circumstances of the parties render suitable and proper. 10

3. That said defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time, under the compulsory orders of this court, as provided by the statute.

4. In case the defendant cannot be found in this State to be served with process, that his estate, property and effects in this State may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor. 20

5. That defendant may be required to pay complainant a proper amount for counsel fees, and that she may have such further equity as to your Honor shall seem meet.

6. That a writ of subpoena may issue commanding the said defendant to answer this bill of complaint and to abide by such decree as this court may make in the premises. 30

MERRITT LANE,  
Solicitor for and of Counsel with  
Complainant.

*Bill of Complaint—Affidavit of Lillian E. Pfender.*

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. }ss.

LILLIAN E. PFENDER, of full age, being duly sworn according to law, on her oath deposes and says:

I have read the foregoing bill of complaint and know the contents thereof, and the same is true to my knowledge except as to the matters that are therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. 10

I further say that:

On May 15, 1902, I was lawfully married to my present husband, Carl Depew Pfender, at Grace Episcopal Church in the City of Plainfield, Union County, New Jersey, by the Rev. Dr. E. M. Rodman, a minister of the Gospel. 20

After the said marriage my husband and I went to reside at Montclair, Essex County, New Jersey, and subsequently went to reside at 364 Ridgewood avenue, Glen Ridge, Essex County, New Jersey, where we have resided for about 7 years, and have cohabited together, from the time of said marriage and during the past 7 years, until the abandonment of me by my said husband as hereinafter set forth.

No children have been born to me and my said husband as the fruit of said marriage. 30

From the time of my marriage I have never received any money for my own personal use, until about the year 1923, when my husband, the defendant, gave me \$10.00 per month to spend for myself. My husband, however, paid for what clothes he permitted me to buy, all of which purchases were always subject to his approval, he stating that I did not need any money. In May, 1926, my husband promised to pay me 40

*Bill of Complaint—Affidavit of Lillian E. Pfender.*

\$100 per month if I would go to Lake Champlain and there superintend the construction of a summer home which he is building. I went to Lake Champlain and did receive \$100 per month during the months of May, June and July, 1926, when I returned to Glen Ridge.

10 On October 1st, 1926, my husband, without any justifiable cause, abandoned me and separated himself from me and refused and neglected, and still refuses and neglects to maintain and provide for me.

I am now dependent entirely upon my husband for support. I have no money and I am unable to work.

20 My husband is possessed of a large amount of real and personal property. He is the owner of a house at 364 Ridgewood avenue, Glen Ridge, New Jersey, in which I am living at present, worth over \$100,000; he is the owner of property at Westport, Lake Champlain, N. Y., which up to this time, I am informed and believe, and therefore charge, has cost \$50,000 and is not yet finished; he is the owner of a one-third interest in the estate of his mother, the late Eliza Depew Pfender, his undivided share amounting, as I am informed and believe, and therefore charge, to more than \$35,000; he has a one-third interest in a partnership, conducting business under the firm name and style of H. P. McKinney & Co., at 80 Fifth avenue, N. Y., and I am informed and believe, and therefore charge, that the business conducted by the said partnership is that of wholesale woolen commission merchants, and that the income of my husband, from the said business is not less than \$150,000 per year, and is more than said amount, and I

*Bill of Complaint—Affidavit of Lillian E. Pfender.*

am informed and believe, and therefore charge, it is upwards of \$300,000 per year.

Up to the time of his desertion of me, my husband employed three servants in the house at Glen Ridge, at a cost of not less than \$400 per month, a laundress at a cost of not less than \$50 per month, a gardener at a cost of \$150 per month, and a cook and butler at a total of \$200 per month; he owns and maintains two Cadillac automobiles and a horse for his own use, and I am informed and believe, and therefore charge, that my husband has paid, in the maintenance of the home and servants, as hereinabove set forth, upwards of \$55,000 and \$100,000 each year. I am not able to state exactly the amount of my husband's income, but I know that he is amply able to earn \$300,000 per year by his personal attention to his business, and is abundantly able to maintain and support me in a manner suitable to our position.

The charges which I have made against my husband in the bill of complaint filed in this case are true and I have made said charges and filed said bill in truth and good faith and without collusion.

LILLIAN E. PFENDER. 30

Subscribe and sworn to before me this 13th day of December, 1926.

ELIZABETH COONS,  
Notary Public of New Jersey.

**ANSWER.**

Filed July 15, 1927.

IN CHANCERY OF NEW JERSEY.

10

*Between*

LILLIAN E. PFENDER,

*Complainant,*

*and*

CARL DEPEW PFENDER,

*Defendant.*

*On Bill, &c.*

*Answer.*

The defendant, answering the bill of complaint, says that:

20

1. He admits the allegations contained in paragraph one of the bill of complaint.

2. He admits the allegations contained in paragraph two of the bill of complaint.

3. He admits the allegations contained in paragraph three of the bill of complaint.

30

4. He denies the allegations contained in paragraph four of the bill of complaint, and further states that he has at all times provided amply for the complainant according to his means, and has provided her with a most comfortable home. Defendant says that he had the title to both the Glen Ridge house and the Lake Champlain house placed in the names of both the complainant and defendant, as tenants by the entirety, and that he has permitted the complainant to pledge his credit at stores and purchase everything that she reasonably required. Defendant states that it is untrue that in May,

40

*Answer.*

1926, he promised to pay complainant \$100.00 per month to go to Lake Champlain and superintend the construction of a summer home. Complainant well knows that the home was as much hers as defendant's, title being in their joint names. It is true as alleged in paragraph four of the complaint, that complainant received \$100.00 from defendant in May, June and July, and defendant also gave complainant \$100.00 in August, but she fails to mention this.

10

In September, the defendant for the reasons later to be alleged, was obliged to leave the house at Glen Ridge. At that time, there was several hundred dollars in her bank account and this sum was entirely drawn by the complainant. In addition to that, the defendant, although he has been advised that he is under no legal obligation to maintain or support the complainant under the circumstances, has voluntarily made ample payment to her.

20

5. He denies the allegations contained in paragraph five of the bill of complaint.

6. He denies the allegations contained in paragraph six of the bill of complaint.

7. The defendant denies that he is the owner of the Glen Ridge or Lake Champlain properties, but states that the true facts are as hereinabove alleged. The Glen Ridge property is worth approximately \$70,000.00, and the Lake Champlain property is worth approximately \$25,000.00. Defendant denies that he is the owner of a one-third interest in the estate of his mother, but states that he is the owner of a one-sixth interest. His share is worth not \$35,000, as is stated by complainant, but approximately \$10,000.00.

30

40

*Answer.*

This estate produced no income for some time and in fact this defendant was obliged to expend several thousand dollars in maintaining and keeping up properties which produced little income and there is now owed to him from his brothers and sisters, as their shares of expenditures made by defendant on his mother's estate, the sum of approximately \$9,500.00.

Further answering, the defendant says that he has not a one-third interest in the partnership business of H. P. McKinney & Co., but he has a nineteen per cent interest in ninety-two per cent of said partnership, an eight per cent deduction being first made in favor of certain old employees, and the balance of ninety-two per cent is divisible among the partners, of which the defendant has a nineteen per cent interest. Defendant further answering, says that the statements made by complainant as to his income are as grotesque and ridiculous as most of the other statements and charges of the complainant in recent years. The drawing account of the defendant is \$12,500.00 a year. Anything drawn in excess of that is by agreement between the partners. The business, which is that of woolen commission merchants, varies broadly from year to year in profit. Defendant's earnings in the last few years have of necessity been reinvested back into the business, so as to build up defendant's interest. Without exact data at hand, defendant says that the variations in the last six years have been from a minimum of \$20,000 to a maximum of \$75,000 a year.

Defendant further says that he did in 1926 exhaust his account, having expended nearly \$50,000 in the building of the Lake Champlain home, running of the Glen Ridge home, expense

*Answer.*

and maintenance of himself and family and money loaned to the son of complainant.

The complainant well knows that statements in paragraph seven as to the expense of running the home are absurdly exaggerated. At times there have been two servants in the house and a gardener outside. The entire expense for servants inside have never exceeded \$180.00 a month. The expense of a laundress has never exceeded \$30.00 a month and for the last eight months, the laundry was entirely taken out of the house. The gardener has been hired at an expense varying from \$120.00 to \$150.00 a month.

The defendant, further answering the bill of complaint, says that for the past two and a half or three years, the complainant has treated the defendant with extreme cruelty. She has adopted a course of nagging, fault-finding, bickering, haranguing and as times went on her attitude toward the defendant seemed to become one of malicious hatred, scorn, contempt and brutal cruelty. In the spring of 1924, in a taxicab in New York, going to a ferry after an occasion on which the complainant had discharged her doctor at a hospital in New York, she, without any cause or provocation whatever, struck the defendant severely in the face with her fists, causing him much pain and agony. The last year and a half, the complainant has continuously made unfounded and unjust charges and accusations against this defendant. On innumerable occasions she has made statements to this defendant and to many friends and associates, charging the defendant with infidelity on frequent occasions at numberless places. It has been for some time the custom of the defendant to take exercise in the early mornings on horse-

*Answer.*

back through the parks and roads in the vicinity of Glen Ridge. Sometime before September, 1926, the complainant commenced to continuously repeat charges that the defendant had been meeting women on these rides; had been intimate with them and unfaithful to her, and that he had  
10 been unfaithful to her and intimate with employees. All of these charges are base, groundless and without a shred of foundation.

The complainant, for many months before the 1st of October, 1926, and since then, has continuously charged that the defendant was mentally incompetent; that he was insane and she has, by interviews with his partners; by talks with his friends and associates in every way possible endeavored to break up his business,  
20 to destroy his peace of mind and happiness and to injure him in every way.

Some weeks before the 1st of October, 1926, the complainant secured revolvers with which she threatened to kill the defendant. These threats were repeated and one morning, just before the 1st of October, 1926, complainant stated to defendant that she had stood over him with a revolver while he had slept and that she did not know why she had not  
30 shot him. The threats to kill the defendant were made by the complainant to others and by them repeated to the defendant. For some days before leaving the house, the defendant, before retiring, locked, bolted and barred his door and moved his bed to a part of the room where the complainant would not be likely to expect it to be, with the thought that if she shot through the panel of the door, he might thereby escape with his life.

40

*Answer.*

Complainant's course of conduct continued with increased brutality and relentlessness. Her bitterness, without any cause therefor, became more and more manifest and on the 1st of October, 1926, the defendant, whose health had been greatly impaired by the cruelty of the complainant towards him, fearing that the complainant might carry out her threat and kill him if he should continue to reside there with the complainant, left the Glen Ridge house and the complainant.  
10

Complainant has a son by a former marriage, a man of twenty-nine years of age. This son was strong and able-bodied but seemed unwilling to work if he could get this defendant to support him and for a considerable period of time, defendant did support him and maintain and provide for him; and gave him spending money.  
20 Some months ago, at the request of the complainant and her said son, the defendant advanced a considerable sum of money to the said son in order that he might purchase a farm in New York State, which farm, defendant is informed, was purchased by said son of complainant. Defendant at all times, feeling sorry for the child of his wife, did everything within his power to make life comfortable and agreeable  
30 for him. Nevertheless, complainant has so poisoned the mind of the said son against the defendant, that he very recently wrote to a friend of this defendant a threatening, abusive letter in which, among other things, he threatened to shoot the defendant.

Defendant has, for some two years and a half, continuously sought to alienate all of the defendant's friends and relatives; she has ordered them out of the house, insulted them, refused  
40

*Answer.*

to let them in when they called and has in every possible way sought to destroy this defendant's happiness of mind, until the condition became so unendurable that defendant on or about the 1st of October, refused longer to endure it.

10 Further answering, the defendant says that it is untrue that this defendant has permitted the complainant to be without funds or in need. Before the filing of this bill, complainant has continuously been represented by counsel in this State, which counsel were continuously in touch with defendant's counsel. From the 1st of October, 1926, until the 11th of December, the Glen Ridge property has been unoccupied and has been in charge of caretakers, the complainant during that time, as defendant was informed, 20 being in Atlantic City. Defendant, voluntarily, and without prejudice, offered to complainant's counsel to permit both the Glen Ridge and New York properties to be sold and one-half the proceeds belong to the complainant, absolutely, having same placed in a trust fund subject to her disposal, and the defendant voluntarily and without prejudice having been advised that he was under no legal necessity of providing for his wife under the circumstances of this case, offered to provide additional funds sufficient to 30 permit the complainant to live in perfect comfort and ease during her natural lifetime. It was while this offer was pending and unaccepted that complainant left her second attorney because of his refusal to have the defendant adjudicated insane. While this offer was not replied to—either accepted or refused, the bill in the present case was without notice to this defendant filed.

40 Since these proceedings have been under way the commission woolen business has undergone

*Answer.*

a serious change. Certain mills have closed down. Business has been much curtailed. Losses on accounts have increased and it is impossible to predict the future of business, except that it may be asserted with confidence that the earnings of the former years will be very greatly and materially reduced in the current year. In the 10 year 1926 the defendant was compelled to exhaust earnings for the purpose of carrying the expenditures incident to the New York and New Jersey properties in which complainant has a joint interest.

Defendant prays that the bill may be dismissed.

LUM, TAMBLYN & COLYER,  
Solicitors for Defendant. 20

Service of the within answer is hereby acknowledged this 8th day of July, 1927, as of time.

MERRITT LANE,  
Solicitor for Complainant. 30

**PETITION FOR DIVORCE.**

Filed April 6, 1927.

## IN CHANCERY OF NEW JERSEY.

10 *To his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:*

The petition of Carl D. Pfender, of the Borough of Glen Ridge, in the County of Essex and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Lillian E. Pfender, the defendant in this suit, on the 15th day of May, 1902, by the Rev. Dr. E. M. Rodman, a minister of the gospel, at Grace Episcopal Church, in the City of Plainfield, Union County, New Jersey.

2. Your petitioner and the defendant lived together as hereinafter stated, from the date of their marriage until the 1st day of October, 1926, when he was compelled to separate from her finally because of her extreme cruelty to him as hereinafter set forth.

30 3. Almost from the beginning of his married life, your petitioner has suffered from the violent and ungovernable temper of his wife. These attacks, together with the use of threats to kill your petitioner continued at intervals until they culminated in the instances now particularly described.

40 4. Immediately after the marriage of your petitioner to his wife, she showed a great dislike and bitterness to all of petitioner's relatives and friends, so that eventually her constant nagging, fault-finding, haranguing and insulting di-

*Petition for Divorce.*

rected toward petitioner and his relatives estranged them from him.

5. In June of 1914, upon your petitioner's returning from a two-day fishing trip to Greenwood Lake, he found his wife in a very menacing rage, and upon his returning to the house after putting his car in the garage, found all the windows and doors locked to prevent his entering, and he was compelled to spend the night in the garage, and from that time on, the defendant frequently locked your petitioner out of his room and out of the house, with absolutely no reason whatsoever for so doing.

6. In May of 1923, your petitioner, whose health at that time was poor, planned to go on a short fishing trip to Maine, which greatly incensed the defendant and she became so uncontrollably angry and abusive that she tore up petitioner's fishing licenses and only agreed to permit petitioner to go after he promised to take her abroad upon his return, which he did.

7. In the spring of 1924, defendant's attitude and treatment toward your petitioner became aggravated and in May of 1924, in a taxi going to a ferryboat after an occasion on which the defendant had without cause discharged and rudely insulted a doctor who had been attending her for a great many years, she, without any cause or provocation whatever struck your petitioner severely in the face with her fists, causing him much pain and agony.

8. Throughout the late spring and early summer of 1924, defendant's treatment toward your petitioner continued the same, and during a week-end spent by your petitioner and defend-

*Petition for Divorce.*

ant over the 4th of July at Westport, New York, she became greatly enraged and violent toward petitioner and insisted that he leave the house immediately with the servants, and she compelled him to leave that very day and return to the city.

10 9. During the winter of 1924, defendant continued to treat your petitioner cruelly, and without any regard and consideration for him. At Christmas of that year, when petitioner's sister visited them, defendant insulted and abused her and so violently swore at her and himself and the entire family that petitioner's sister was compelled to leave the house. From that time on, defendant's conduct became more cruel and domineering; she continuously made slurring remarks concerning your petitioner to friends, relatives and business associates; she sought to alienate all petitioner's friends and relatives, ordered them out of the house, insulted them, refused to let them in when they called and in every possible way sought to destroy your petitioner's peace, health and happiness of mind.

30 10. In the early spring of 1925, defendant adopted a course of conduct toward your petitioner in which she persisted and her attitude seemed to become one of malicious hatred, scorn and contempt, and she would, when she became more than ordinarily abusive, lock him out of his sleeping quarters. On one occasion she locked your petitioner out of a room leading to his sleeping quarters, and he was thereupon compelled to push the panel out of the door in order to gain access to his room, whereupon defendant became violently enraged, abused petitioner and he was greatly in fear that she would do him some bodily injury.

40

*Petition for Divorce.*

11. Some time about September of 1925, and for some time before then, defendant unjustly accused petitioner of infidelity and charged him with meeting women while taking his usual morning exercise on horseback through the parks and roads in the vicinity of Glen Ridge, all of which was absolutely untrue and made without a shred of basis. Defendant also continued in these baseless accusations and also charged that the petitioner was mentally incompetent; that he was insane, and she has, by interviews with his partner, by talks with his friends and associates in every way possible endeavored to break up his business, to destroy his peace of mind and happiness, to break his health and to injure him in every way. 10

12. Some weeks before the 1st of October, 1926, the defendant secured revolvers with which she threatened to kill the petitioner. These threats were repeated and were also made by the defendant to others and by them repeated to the petitioner. Coupled with these threats to take petitioner's life, her brutality and relentlessness increased and for some days prior to September 30th and on that day, defendant's infamous abuse reached such a height, that petitioner, whose health had been greatly impaired by the cruelty of the defendant toward him, became alarmed and in fear that if he continued to reside at his home in Glen Ridge with the defendant, that she would carry out her repeated threats and kill him, or do him severe bodily injury, whereupon he left his home and went to live with his friends at Glen Ridge, New Jersey, on October 1st, 1926, where he has since then been residing. 20 30

40

*Petition for Divorce.*

13. Your petitioner has not lived with the defendant since the date last before mentioned but has resided with friends at Glen Ridge, New Jersey.

10 14. Petitioner and defendant were *bona fide* residents of the State of New Jersey when this cause of action arose, and they have ever since continued to be *bona fide* residents of this State, down to the time of the commencement of this action, residing at Montclair, Plainfield, Ridgewood and Glen Ridge, New Jersey.

15. No children were born of the marriage aforesaid.

20 Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved, for the cause aforesaid, according to the statute in such case made and provided; and that he may have such further relief as may be just.

And your petitioner will ever pray, etc.

LUM, TAMBLYN & COLYER,  
Solicitors for Petitioner.

30

40

*Petition for Divorce.*

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

CARL D. PFENDER, being duly sworn according to law, upon his oath deposes and says, that he is the petitioner named in the foregoing petition; and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith, for the causes set forth in the petition. 10

CARL D. PFENDER.

Sworn and subscribed to before me this 5th day of April, 1927.

ELEANOR LOWENSTEIN,  
An Attorney-at-Law of New Jersey. 20

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*Answer and Counter-claim.*

Westport, N. Y., petitioner came to Westport from New York, where he had been during the week, on a night train, arriving at Westport at 5:30 o'clock Saturday morning, and almost immediately after his arrival went fishing, and on his return was very angry and began to curse and swear at defendant, and to say that he was sorry that he had started building a house at Westport for the reason that when it was finished he would have as much money sunk in it as in the home of defendant and petitioner at Glen Ridge; that he found that he could have purchased a house in Vermont for a very small amount of money; petitioner's abusive treatment of defendant continued all day, and in the evening on retiring to their room, defendant asked petitioner to tell her the reason for his treatment of her, saying that she could not understand why he should be so cold and cruel and abusive to her, when during his absence he had written her many affectionate letters, and asked whether anything had happened to come between petitioner and defendant; that petitioner thereupon stated to defendant that he had fallen in love with a woman whom he named; that he had been paying attention to this woman for upwards of six years; that he had been meeting her in Jersey City and taking her to drive in the evenings in defendant's automobile; that all that persons were looking for in these times was a good time without responsibilities; that he had hugged and kissed the woman in question; but that there had been no sexual relations between them as yet; and defendant thereupon said to petitioner that she could not understand such conduct on his part; that he was apparently a religious man, and that she could not account

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*Answer and Counter-claim.*

for such conduct; that he must be crazy to have done such a thing, if it were true. Defendant says that she does not know whether the statements made by her said husband, are true, and that she does not believe that they were true, but does believe that the statements were made by the petitioner merely to offend defendant and to be cruel to her. She denies that she ever said that petitioner was insane, and denies that during interviews with his partner and talks with his friends and associates, she in any manner endeavored to break up his business or to destroy his peace of mind and happiness, or break his health, or injure him in any way. Defendant says as a result of petitioner's insistence that he was in love with the woman whom he named, as hereinabove set forth, she did write a letter on August 19, 1926, to an employee of petitioner, asking such employee to talk with the young woman with whom petitioner told defendant he was in love, and to use her good influence in behalf of defendant; to say to her that defendant and petitioner had been married and lived together for twenty-four and a half years; that defendant loved petitioner and that she did not want anything to come into their lives and break up their happiness. On August 27, 1926, petitioner returned home at Glen Ridge from business in New York and inquired of defendant whether she had written to his business associate, and defendant replied that she had not; petitioner told her that he had had a talk with his business associate and he advised him to "go home and straighten out matters with your wife" so that we would be 100 per cent. good in his business again, and petitioner told the defendant that he intended to do this. Defendant

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*Answer and Counter-claim.*

says that she has no knowledge of the truth of the matters told her by the petitioner.

12. She denies each and every allegation in paragraph 12, except as follows:

10 Petitioner kept in the house, a revolver which was owned by defendant's son. The revolver was kept loaded in a cabinet in the front hall, and had been there for many years, after burglars had attempted to enter the home. Defendant's son intended leaving for his farm and taking his revolver with him, and thereupon defendant spoke to petitioner and asked if it would not be wise to purchase a revolver to have same in the house, as there had been numerous robberies in the neighborhood of defendant's home in Glen Ridge. Petitioner told defendant to purchase a revolver if she wished and defendant thereupon on September 10, 1926, purchased a revolver which she kept in a drawer of a table beside her bed from September 14th to September 17th, when she gave it to the gardener who lived in the garage upon the premises. Petitioner was frequently away from home on business trips from three to five days at a time, and defendant was frequently at home alone when the servants went out. She admits that petitioner left home on 30 October 1, 1926, since which time he has lived separate and apart from her.

13. She admits that petitioner has not lived with defendant since October 1, 1926, but has no knowledge of petitioner's present place of residence.

14. She admits paragraph 14.

15. She admits paragraph 15.

*Answer and Counter-claim.*

16. Petitioner has condoned said supposed acts of cruelty, in that, with knowledge, he did continue matrimonial cohabitation with defendant until September 26, 1926, when he separated himself from her and slept in a separate room until October 1, 1926, when he left, and that during such cohabitation and ever since, this defendant has treated said petitioner with conjugal kindness. 10

## COUNTER-CLAIM.

And the defendant by way of counter-claim against the petitioner, says that:

1. She repeats the allegations of the answer.

2. After the marriage of defendant and petitioner they cohabited together from the date of the said marriage down to September 26, 1926. From the date of said marriage until about the month of March, 1926, petitioner treated defendant with great kindness and affection, but in the month of March, 1926, petitioner began a course of cruel and abusive treatment toward defendant, addressing profane and indecent language to defendant, and when defendant was sick, in the month of March, 1926, in her home in Glen Ridge, New Jersey, when defendant had no servants in the house, petitioner refused to bring food or drink or medicine to defendant, although petitioner knew that defendant was sick and was under the care of a physician, saying to defendant that he had no time to wait on her, that his business was of more importance. Defendant continued to be sick for upwards of a month, during the whole of which time petitioner treated her with great cruelty, refusing to bring her food and drink, refusing to furnish proper nurses, 30 40

*Answer and Counter-claim.*

and refusing to employ servants in the house, so that defendant was obliged to secure her own food, going down the stairs, although she was too ill to be out of bed.

10 While defendant was sick in bed petitioner requested her to execute an instrument, conveying to him, or to his nominee, her interest in the property purchased at Westport, New York, owned by petitioner and defendant, and her interest in the property owned by petitioner and defendant in Glen Ridge, New Jersey, and also any interest which the defendant had, or might have, in the estate of petitioner's mother. The properties at Westport and Glen Ridge are owned, as defendant is informed and believes, and therefore charges, by defendant and petitioner jointly. Petitioner stated to defendant 20 that his reason for asking her to do this was that he did not wish any of defendant's property to pass to her relatives on her death. Defendant informed petitioner that she did not think it was right for petitioner to ask her to execute such an instrument, and thereupon petitioner became angry and abusive to defendant and cursed and swore at her and called her indecent names.

30 During the entire month of March, 1926, during which time defendant was sick as hereinabove set forth, said petitioner brought defendant food only three times, and during the entire balance of the month defendant was obliged to prepare her own food, without the aid of any servant or nurse, and was left lying in the house alone during the entire day and many of the nights. Petitioner's treatment of defendant continued to be abusive; he continued cursing and swearing at her and addressing vile and indecent language 40

*Answer and Counter-claim.*

to her until defendant was able to get out of bed and go about her usual duties about the house.

3. From the time of her marriage, defendant has never received any money for her own personal use, until about the year 1923, when petitioner gave her \$10.00 per month to spend for herself. Petitioner, however, paid for what clothes he permitted defendant to buy, all of which purchases were subject to his approval, from time to time, he stating to the defendant that she did not need any money. In May, 1926, petitioner promised to pay defendant \$100 per month if she would go to Westport and superintend the construction of the summer home which petitioner was building, and defendant did go to Westport and did receive \$100 per month during the months of May, June and July, 1926, when defendant returned to Glen Ridge. During the month of May, 1926, when defendant had returned from Westport, N. Y., after the erection of the summer home had begun, petitioner's treatment of her became very kind and he resumed cohabitation with her, and except for occasional outbursts of temper on the part of the petitioner his treatment of her continued to be kind until the 7th of August, 1926, when petitioner informed defendant that he was in love with another woman, as alleged in paragraph 11 of the answer, all of the allegations of which paragraph defendant here repeats.

4. Petitioner continued to be cruel and abusive to defendant, saying that defendant was insane and that she had imagined all of the things that petitioner had told her respecting his love for another woman, as hereinabove set 40

*Answer and Counter-claim.*

forth. During one or two of the outbursts of temper on the part of petitioner against the defendant, petitioner broke down the door to defendant's bedroom where she had fled for safety from his attacks, as alleged in paragraph 10 of the answer, all of the allegations of which paragraph defendant here repeats.

5. At 10 o'clock on the night of October 1, 1926, petitioner attempted to cause defendant to be arrested and committed to a lunatic asylum. Petitioner came to the house in company with four or five men, and sought to enter the house, and to take defendant to an asylum, but defendant, in fear of her life, refused to open the door. Defendant, in fear of her life and safety, concealed herself in the house and in the home of friends, and on October 11, 1926, petitioner again attempted to cause her arrest and commitment to an insane asylum, and defendant was obliged to conceal herself in order to escape from being committed to an asylum.

6. Defendant returned to her home in Glen Ridge on December 12, 1926, and has continued to reside there ever since.

7. Defendant says that petitioner has been guilty of extreme cruelty against the defendant as hereabove in this counter-claim alleged, the last acts of cruelty complained of having been committed by said petitioner on October 11, 1926, and October 1st, 1926, being more than six months prior to the filing of this answer and counter-claim.

Defendant prays that the petition of the petitioner against defendant may be dismissed;

*Answer and Counter-claim.*

That the marriage between defendant and petitioner may be dissolved for the causes aforesaid, according to the statute in such case made and provided;

That the petitioner may be decreed to provide suitable support and maintenance to be paid and provided by him, or made out of his property for the defendant, and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the defendant may have such other and further relief as may be just.

MERRITT LANE,  
Solicitor for Defendant.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

LILLIAN E. PFENDER, of full age, being duly sworn according to law, on her oath deposes and says:

I am the defendant-counter-claimant named in the foregoing answer and counter-claim. Said counter-claim is not made by me by any collusion between me and the said petitioner, but in truth and good faith for the causes set forth in the said counter-claim.

LILLIAN E. PFENDER.

Sworn and subscribed to before  
me this 5th day of May, 1927.

ELIZABETH A. COONS,  
Notary Public of New Jersey.

ANSWERING AFFIDAVIT.

Filed July 15, 1927.

IN CHANCERY OF NEW JERSEY.

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*Between*

LILLIAN E. PFENDER,  
*Complainant,*

*and*

CARL D. PFENDER,  
*Defendant.*

*On Bill, etc.*

*Answering  
Affidavit.*

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

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CARL D. PFENDER, of full age, being duly sworn according to law, on his oath deposes and says that he is the petitioner in a suit filed in this court seeking absolute divorce from his wife, Lillian E. Pfender; that he is the defendant in two suits instituted by the said Lillian E. Pfender in this court against him, one seeking separate maintenance and the other seeking by counter-claim absolute divorce. Said Carl D. Pfender further says that he has filed an answer denying all of the charges of cruelty made against him by his wife and that he has an abundance of witnesses ready and prepared to prove the truth of all of the charges set forth by him in his petition heretofore filed.

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Deponent further says that the statements made by said Lillian E. Pfender as to his property and income are grotesque and absurd exaggerations. Deponent is a partner in the firm of H. P. McKenny & Co., commission woolen mer-

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*Answering Affidavit of Carl D. Pfender.*

chants; that eight (8) per cent. of the interest in the partnership is held by certain old employees; that the balance of 92% is divisible among the partners and deponent has 19% of said 92%.

Deponent further says that his drawing account is and for several years has been the sum of \$12,500.00 a year and that anything drawn in excess of that during the year can be had only by mutual agreement between the parties. The business, which is that of woolen commission merchants, varies broadly from year to year in profit. Preceding the last year, for some few years, business conditions were very favorable and deponent was able to draw at the end of each year substantial sums as against his interest. This was used in the purchase of land and the building at Glen Ridge and building the Westport house, the title to both of which was placed in the joint names of deponent and his said wife, although she contributed nothing whatever thereto. Deponent's wife desired every possible luxury, and in the hope of peace and with the vain thought that he might satisfy her, deponent was encouraged to plans of living beyond his financial position. The expenditures made by him on the Glen Ridge house and land are upwards of \$100,000.00. The expenditures made on the Westport summer home are in excess of \$30,000.00, and approximately \$5,000.00 more will be needed to complete it and make it livable.

Deponent further says that said Lillian E. Pfender has interviewed deponent's partner, several of his social and business friends and has, in every way possible, endeavored to ruin his business and destroy the possibility of his making a livelihood. She has charged him with adul-

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*Answering Affidavit of Carl D. Pfender.*

tery. She has charged him with brutality. She has on repeated occasions threatened to kill deponent. She has had revolvers for that purpose and has made statements to several witnesses that she wished deponent was dead and that she intended to shoot him.

10 In the hope of avoiding litigation and of securing peace of mind, which would enable him to do his share in the business, deponent has made every reasonable effort to appease the inordinate demands of the said Lillian E. Pfender with the several different attorneys with whom she has been in touch since October 1st of last year. Deponent believes that the said Lillian E. Pfender is inspired by the desire to destroy his business and ruin his health if possible.

20 The drafts made upon deponent's financial resources have been such that it has been impossible for him to accumulate anything of consequence, with the exception of the real estate above mentioned and his interest in the partnership, which is essential of preservation if he is to continue in the business. Deponent has no stocks or bonds or securities whatsoever held by himself or held by any other in trust for him. He inherited an interest in an estate from his mother, his share thereof being worth approximately \$10,000.00. The estate produced little income for some time and the expense of maintaining and keeping up the properties has been such that deponent has been compelled to advance money therefor and is owed by his brothers and sisters approximately \$9,500.00 as their share of advancements for said expenditures made by deponent.

40 Business in the woolen line at the present time is in a very serious condition. This is well known

*Answering Affidavit of Carl D. Pfender.*

to anyone or easily ascertainable by any one in touch with that line. Prices are lower than for some time and the new season opening in July indicates further decreasing prices. Most concerns in deponent's line of business, as well as the woolen mills, are at the present time losing money. Several mills are running only part time; others are shut down. Even running part time, a heavy stock is accumulating, causing heavy charges for insurance and storage. Stock goods at the present time are selling at a discount of from 10% to as high as 40% in some instances, which still further reduce both the amount of sales and income. Deponent does not control the business and his profits are not available beyond the \$12,500.00 salary and drawing account until business for the year has been closed and all accounts collected. Goods are sold on terms of four months, with dating in some instances that make accounts fall due nearly seven months after date of the bill. Deponent's capital is now less than it should be. A few years ago it was up to 22%. Since then it has been reduced on account of withdrawals which he has made in an effort to try to satisfy his wife's demands. No one can now see the end of the present slump in deponent's business. They anticipate increased losses from failures. It is significant and indicative of the times that the American Woolen Company just passed and omitted its last dividend.

All of this has made it highly advisable that expenses should be curtailed and deponent has, through his counsel, requested each of the several lawyers retained by his wife since last October to co-operate in working out a plan for the sale of the Glen Ridge property and the Westport

*Answering Affidavit of Carl D. Pfender.*

property. Deponent believes that his wife has been advised to this course, but has obstinately refused to accept the advice given to her. She is now occupying alone the large house at No. 364 Ridgewood avenue, Glen Ridge,

10 Deponent has paid or must pay as a result of complainant's occupancy and attitude:

Taxes for the year 1927.....	\$1,987.02
Assessment for re-surfacing road .....	55.48
Gardener at \$35.00 a week .....	1,820.00
Insurance on house, furniture, garage, burglary, etc. ....	268.03
Insurance on automobiles .....	240.48
Upkeep (estimated) .....	500.00
Coal—house and garage, approximately.	500.00
20 Interest at 6% on \$70,000—amount prop- erty should bring (investment in it is over \$100,000.00) .....	4,200.00
<hr/>	
Total .....	\$9,571.01

Westport house:

Taxes .....	\$ 214.33
Insurance .....	84.00
Interest on \$36,048.80 spent on house, land, etc. ....	2,162.92

30 Grand total .....\$12,032.26

Deponent has proposed that both properties should be sold and agreed to permit one-half of the net proceeds to be made over to his wife, but this has been refused and such offer and all other offers have now been withdrawn by deponent because he is convinced that his wife's desire is to harrass, vex and annoy him and ruin his business and health if possible.

*Answering Affidavit of Carl D. Pfender.*

Deponent has made most generous offers in the hope of avoiding the necessity of the course he must now pursue. He has voluntarily paid his wife \$125.00 a week in addition to covering all of the expenses above outlined and permitting her to occupy the Ridgewood avenue house, in addition to which he has paid monthly telephone bills, gas and electric light bills, water bills, plumbing, automobile expenses, etc., for his wife and was so doing at the time she filed in this court her bill charging that he was refusing to maintain and provide for her.

It is on the basis of this that deponent requests and urges that no order be made against him at this time either as to counsel fees or alimony or separate maintenance. Deponent's suit against his wife charging cruelty is set down for trial before Vice-Chancellor Berry November 23, 1927. If deponent should fail before that time in the performance of any of the financial duties and responsibilities now being carried out by him deponent feels that it would be time for his wife to take the position she is now asserting. At the present time deponent is paying, directly and indirectly for his wife far more than he is advised she is legally entitled to and deponent feels that in equity consideration should and will be given to the fact that instead of accumulating considerable funds from his own earnings for the past few years deponent has actually cut into his proportion of the partnership and has put everything into properties, joint title to which has been placed in the names of his wife and himself, and which, in the event of deponent's death, would go entirely to deponent's said wife.

(Signed) CARL D. PFENDER.

*Affidavit of Ida B. Conklin.*

Subscribed and sworn to before me  
this 8th day of July, 1927.

CHARLES T. LANDMESSER,  
A Master in Chancery of New Jersey.

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Filed July 15, 1927.

IN CHANCERY OF NEW JERSEY.

*Between*

LILLIAN E. PFENDER,  
*Complainant,*

*and*

CARL DEPEW PFENDER,  
*Defendant.*

*On Bill, etc.*

*Affidavit.*

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STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

IDA B. CONKLIN, of full age, being duly sworn according to law, on her oath deposes and says that she was a housekeeper in the employ of Mr. and Mrs. Pfender at Ridgewood avenue, Glen Ridge, N. J., in the year 1926. At that time Mrs. Pfender made various accusations against her husband, saying that he was trying to poison her and that he had tried to take her out on a lake and drown her. She said that he was crazy and that he was intimate with other women, naming times and places. She told deponent that her husband had spent thousands of dollars on other women, that he regularly gave one of them large sums of money and diamonds and that she

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*Affidavit of Ida B. Conklin.*

had proof of this. She told deponent all of this several times and said that this would be another Hall-Mills case; that she had a revolver and that she had given it to the gardener, but that she had had the gardener bring it into the house again. Deponent heard her tell the gardener to say that she had given him the gun the day after she had shown it to the minister, Mr. Dougherty, although she did not give it to the gardener for at least two weeks after that time.

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Deponent had a friend die suddenly, and on telling Mrs. Pfender about it she said, "I wish to God it had been Mr. Pfender." She told deponent that she was praying that Mr. Pfender might be killed by the cars or an auto.

Mrs. Pfender left the house in October. Deponent remained as caretaker in charge of the house until Sunday, the 12th of December, when Mrs. Pfender returned. Deponent greeted her as usual. She gave deponent a shove, called her a "dirty liar." She said she didn't wish deponent to speak to her and that deponent could not stay in her house after what deponent had done and deponent left that day.

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Deponent further says that she has always observed that Mr. Pfender treated his wife with kindness and consideration, had a beautiful home and deponent never saw anything to occasion the attitude shown by Mrs. Pfender against her husband.

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(Signed) IDA B. CONKLIN.

Subscribed and sworn to before me  
this 8th day of July, 1927.

J. W. WILEY,  
Notary Public of N. J.

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*Affidavit of George P. Dougherty.*

Filed July 15, 1927.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>LILLIAN E. PFENDER, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>CARL DEPEW PFENDER, <i>Defendant.</i></p>	}	<p><i>On Bill, etc.</i></p> <p><i>Affidavit.</i></p>
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STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

20 GEORGE P. DOUGHERTY, of full age, being duly sworn according to law, on his oath deposes and says that he well knows Lillian E. Pfender, the complainant, and Carl D. Pfender, the defendant in the above-entitled action.

30 Deponent further says that he has been the pastor of the said Carl D. Pfender for some considerable time and that the said Carl D. Pfender is a man of fine standing and excellent repute in the community in which he lives and to deponent's personal knowledge is a man of fine sense of honor, excellent moral character and integrity of soul.

Deponent further says that for some time he had observed extreme jealousy on behalf of the said Lillian E. Pfender. The jealousy was extended toward anyone with whom her husband came in contact in any way. It was an unreasonable, malign and sinister jealousy—one that could not be reached by reason.

40 Deponent further says that he observed various incidents in which the unreasonable and un-

*Affidavit of George P. Dougherty.*

wise conduct of the said Lillian E. Pfender caused her husband extreme anguish of mind and he observed the gradual undermining of the health of the said Carl D. Pfender. Many incidents might be narrated at length as to all of this, but it culminated, so far as deponent was concerned, in September, 1926, at which time the said Lillian E. Pfender stated to deponent that her husband was in the habit of meeting women while he was out horseback riding in parks in the morning, that he had been unfaithful to her and that she intended to kill him and she at that time showed deponent a revolver that she had for that purpose. Deponent took the revolver from her and still has it. Deponent attempted to reason with her but by his attempt merely exasperated her the more. Deponent informed Mr. Pfender of this interview and he then told deponent of his wife's threats upon his life, of the fact that he had been moving his bed at nights so that if she shot through the door he might save his life and that the condition had then grown so intolerable that he was afraid to live longer with his said wife and within a very few weeks after he had separated from her deponent observed a great change in his appearance and a great gain and improvement in his state of health.

The attitude of the said Lillian E. Pfender toward her husband, as indicated in her interviews with deponent, was one of jealousy, antagonism, resentment and bitterness and deponent feels sure that it would have been both unwise and unsafe for the said Carl D. Pfender to have longer attempted to live in the same house with his said wife.

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*Affidavit of George P. Dougherty.*

Deponent further says that he has never seen greater violence of temper and more complete antagonism than was shown on more than one occasion in his presence by Mrs. Pfender toward and against her husband.

10 Deponent has always found Mr. Pfender to be of a quiet and peaceful disposition, a gentleman and very easy to get along with. Incidents and details to verify this deponent can give at full length when and if desired.

Subscribed and sworn to before me  
this        day of July, 1927.

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**ORDER DENYING ALIMONY.**

Filed July 28, 1927.

63/629.

IN CHANCERY OF NEW JERSEY.

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<p><i>Between</i> CARL D. PFENDER, <i>Petitioner,</i>  <i>and</i> LILLIAN E. PFENDER, <i>Defendant.</i></p>	}	<p><i>On Petition for Divorce.</i>  <i>On Petition for Alimony.</i>  <i>Order Denying Alimony.</i></p>
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20 This matter coming on to be heard in the presence of Ralph E. Lum, Esq., of counsel with the petitioner, Carl D. Pfender, and Merritt Lane, Esq., of counsel with the defendant, Lillian E. Pfender, and upon reading the petition of the defendant wherein and among other things she prays for alimony *pendente lite* and counsel fees in this cause and upon reading the pleadings and affidavits filed in this cause and in the cause of action instituted in this court by the defendant against the petitioner herein and the arguments of the respective counsel having been heard, and it appearing that the petitioner has been and is now paying to the defendant the sum of one hundred and twenty-five dollars (\$125.) each week and that defendant is now occupying the home standing in the joint names of the parties hereto, and it further appearing to the Court that the said application for further alimony and counsel fees should be denied:

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40 It is on this 28th day of July, A. D. 1927, ORDERED that the petitioner, Carl D. Pfender,

*Order Denying Alimony.*

continue to pay to the defendant, Lillian E. Pfender, the said sum of one hundred and twenty-five dollars (\$125.) per week and permit the said defendant to occupy the home standing in the joint names of the parties hereto for her support and maintenance until the termination of this  
10 suit.

AND IT IS FURTHER ORDERED that the application of the defendant herein for further alimony *pendente lite* is hereby denied and the application for counsel fees is hereby reserved, with leave to renew same prior to final hearing.

Respectfully advised,

MAJA LEON BERRY,  
V.-C.

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**ANSWER TO COUNTER-CLAIM.**

Filed November 19, 1927.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> CARL D. PFENDER, <i>Petitioner,</i>  <i>and</i> LILLIAN E. PFENDER, <i>Defendant.</i></p>	}	<p><i>On Petition for Divorce.</i></p> <p><i>Answer to Counter- Claim.</i></p>	10
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The petitioner, Carl D. Pfender, answering the counter-claim, says that:

1. He repeats the allegations of the petition as to paragraph 1. 20

2. He denies so much of paragraph 2 as states that he at any time treated the defendant cruelly and abusively, or used any profane and indecent language to defendant, but states that he has always treated her considerately and kindly, and he further denies that he ever at any time when defendant was ill neglected her or refused to provide her with every available means for her comfort and convenience, and further states that he has always done everything within his power to make her comfortable during her illnesses and at all times has treated her with kindness and consideration and has sought to exert every possible means to add to her comfort. 30

Petitioner denies that he at any time cursed and swore at defendant or called her indecent names, and particularly denies that he failed to provide her with proper care whenever she was 40

*Answer to Counter-claim.*

ill, but states and repeats that he has at all times treated defendant with consideration and when she has been ill has obtained for her expert medical care and attention, but defendant by her treatment of her physician antagonized them and met all efforts of kindness and consideration on the part of the petitioner with abuse and cruelty on her part.

3. Petitioner denies that he at any time inadequately supported defendant, but states that he at all times amply provided for her, and repeats that he has at all times treated her with kindness. Petitioner denies that he at any time informed defendant that he was in love with another woman or that he made any such statement to her, but says that defendant frequently accused him, falsely and unjustifiably, of seeing other women, and going with them.

4. Petitioner denies the allegations in paragraph 4 and states that he was compelled to break down the door to defendant's bedroom only to reach his own sleeping quarters, out of which defendant in one of her violent and ungovernable rages, without any basis therefor, had locked the petitioner so that he was unable to go to bed that night.

5. Petitioner denies the allegations in paragraph 5.

6. Petitioner admits paragraph 6.

7. Petitioner denies paragraph 7 and repeats the allegations in his petition, stating that defendant's cruel and inhuman treatment toward him destroyed his health and her continued threats to shoot him injured his nervous system so completely that to protect himself he was compelled to leave on October 1st, 1926.

LUM, TAMBLYN & COLYER,  
Solicitors for Petitioner.

**ORDER.**

63/629.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i>  CARL DEPEW PFENDER,  <i>Petitioner,</i>  <i>and</i>  LILLIAN E. PFENDER,  <i>Defendant.</i></p>	}	<p><i>On Petition,  &amp;c.  Order.</i></p>	<p>10</p>
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It is on this 10th day of May, 1927, ORDERED that the above-entitled cause be consolidated with and tried with the cause of action heretofore brought by the above-named Lillian E. Pfender as complainant, against the said Carl Depew Pfender as defendant, by the filing of the bill of complaint on December 13th, 1926, and the answer thereto filed by the said Carl Depew Pfender, July 15th, 1927.

Respectfully advised, C. 30

V.-C.

We consent to the entering of the above-entitled order.

LUM, TAMBLYN & COLYER,  
Solicitors for Defendant.

DECREE NISI.

Filed January 10, 1928.

IN CHANCERY OF NEW JERSEY.

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*Between*

CARL D. PFENDER,

*Petitioner,*

*and*

LILLIAN E. PFENDER,

*Defendant.*

*On Petition  
for Divorce.*

*Decree Nisi.*

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This cause coming on to be heard in the presence of Lum, Tamblyn & Colyer, Esqs., of counsel with the petitioner, and Merritt Lane, Esq., of counsel with the defendant, on petition, answer and oral proofs taken in open court; whereupon, and upon duly considering the arguments of counsel; from all of which it now appears satisfactorily to the Chancellor, that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the 15th day of May, 1902, and that the defendant has been guilty of extreme cruelty toward the petitioner as alleged in the petition; and that at the time the cause of action for divorce for the said extreme cruelty arose the petitioner and defendant were *bona fide* residents of this State, and have continued so to be down to the time of the commencement of this action; and that the petitioner and defendant have for the two years next preceding the commencement of this action been *bona fide* residents of this State, and it further appearing that jurisdiction herein has been acquired by personal service of process upon the

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*Decree Nisi.*

defendant within this State, and it further appearing that the defendant has withdrawn the counter-claim heretofore filed herein,

It is thereupon, on this tenth day of January, nineteen hundred and twenty-eight, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the defendant's counter-claim and bill for separate maintenance be, and the same are hereby dismissed, and it is further ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this court, and of the acts of the Legislature in such case made and provided, doth hereby order, adjudge and decree that the said petitioner, Carl D. Pfender, and the said defendant, Lillian D. Pfender, be divorced from the bond of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the Court why this decree should not be made absolute within three months from the date hereof.

E. R. WALKER,

*C.*

Respectfully advised,

MAJA LEON BERRY,

*V.-C.*

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*Conclusions of Vice-Chancellor.*

client's behalf, particularly on the question of condonation. That brief has now been submitted and considered, but I am "of the same opinion still."

It is unnecessary for me to review in detail the evidence on which I have reached my conclusion.

10 Numerous acts of cruelty on the part of the defendant wife toward the husband were alleged in the petition, some of which found little support in the evidence submitted and some of which I considered to have been maintained, but which standing alone and without the event which culminated in the separation of the parties on October 21, 1926, I did not consider as sufficient justification for the abandonment of the defendant by the petitioner. Coupled with that event,

20 however, I find that the petitioner has made out a case which entitles him to the relief sought. The event to which I refer is detailed in the following short resume of the facts leading up to the separation: Some months before the parties separated the defendant had become insanely jealous of her husband, rightly or wrongly it is unnecessary for me to decide, as in neither event would the culminating act to which I have referred have been justified. It is appropriate

30 for me to say, however, that there is no evidence of any infidelity on the part of the petitioner and this was not charged except by innuendo in the remarks of counsel and the defendant expressly stated that she never thought or believed the petitioner had been untrue to her. I agree with the petitioner's conclusion on this point. Her jealous attitude manifested itself in various ways, so that living together by these parties was an intolerable existence. The intercession

40 of the rector of the church of which the parties

*Conclusions of Vice-Chancellor.*

were members, was sought by one or both, it does not matter which, with a view to affecting a reconciliation. He interviewed both parties on several occasions and as I view it, found the husband, the petitioner, entirely tractable and willing to forgive and forget. The defendant's jealousy, however, prevented her from receiving the pastor's suggestions in the spirit of compromise and good-will which in my judgment should have controlled her attitude and the intermediary's efforts came to naught. At one of the interviews which the rector had with the defendant she told him that she had purchased a revolver for the purpose of killing her husband, and that she had on one occasion stood by the side of the bed in which her husband was sleeping with a loaded revolver in her hand, intending to shoot petitioner, but that her heart had failed her and she had reconsidered her proposed action because the thought of taking a human life was repugnant to her. She exhibited this instrument of death, with a box of cartridges, to the rector, and later he obtained it from the gardener, to whom the defendant had given it, and produced it at the trial. This and another formidable looking weapon of the same type which she had and which was obtained from the defendant by a physician who later examined her, were offered in evidence and marked as exhibits at the trial. The pastor informed the petitioner of these facts and advised him that for his personal safety it would be wise for him to leave his home, which he accordingly did, and took up his abode at the rectory with his pastor, where he resided for a long time. The testimony of Dr. Dougherty the rector, with reference to this episode cannot be doubted and I place the greatest reliance in

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*Conclusions of Vice-Chancellor.*

10 it. His story is amply corroborated. There was also testimony indicating the purchase by the defendant of at least one other revolver subsequent to the separation. I think, under these circumstances, the petitioner was justified in fearing for his life so long as he remained under the same roof with the defendant and that his abandonment of the defendant was fully justified.

20 The defendant's attitude on the witness stand was not such as to command the full confidence of the Court and I do not consider many of her denials and much of her testimony worthy of belief. It was claimed that all acts of cruelty on her part testified to, including the revolver episode, were condoned. The only testimony indicating any such condonation was that of the defendant and that I do not believe. The petitioner's testimony and attendant circumstances more than overcome the testimony of the defendant on this point.

30 After the separation the petitioner had the defendant examined by two very reputable physicians of the City of Newark for the purpose, evidently, of determining her sanity. This fact is seized upon by the defense as an act of cruelty on the part of the husband, but in my judgment the proceeding was fully justified and prompted by the best of motives.

I will advise a decree for divorce for the petitioner.

Decided January 6, 1928.

**ORDER.**

Filed January 24, 1928.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i>          CARL D. PFENDER,  <i>Petitioner,</i>  <i>and</i>          LILLIAN E. PFENDER,  <i>Defendant.</i></p>	}	<p>10  <i>On Petition          for Divorce.          Order.</i></p>
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20 This matter being opened to the Court by Eugene Blankenhorn, of counsel with defendant, and in the presence of Ralph E. Lum, of counsel with petitioner, it is on this 24th day of January, 1928, ordered that the petitioner pay to the defendant as counsel fee one thousand dollars.

C.

Respectfully advised,  
MAJA LEON BERRY,  
V.-C.

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**NOTICE OF APPEAL.**

Filed April 7, 1928.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i>                  CARL D. PFENDER,  <span style="padding-left: 100px;"><i>Petitioner,</i></span>  <span style="padding-left: 40px;"><i>and</i></span>                  LILLIAN E. PFENDER,  <span style="padding-left: 100px;"><i>Defendant.</i></span></p>	<p><i>On Petition for Divorce.</i></p> <p><i>Notice of Appeal.</i></p>
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The defendant hereby appeals from the whole and every part of the decree *nisi* and decree dismissing counter-claim made herein, on or about the 10th day of January, 1928, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of the Honorable Maja Leon Berry, Vice-Chancellor, to the Court of Errors and Appeals in the last resort in all causes.

MERRITT LANE,  
Solicitor and of Counsel with Defendant.

30 Dated: April 5th, 1928.

I conceive there is good cause for appeal in the above-stated cause.

MERRITT LANE,  
Of Counsel with Defendant.

**PETITION OF APPEAL.**

Filed April 1928.

**New Jersey Court of Errors and Appeals**

10	<p><i>Between</i>                  CARL D. PFENDER,  <span style="padding-left: 100px;"><i>Petitioner-Respondent,</i></span>  <span style="padding-left: 40px;"><i>and</i></span>                  LILLIAN E. PFENDER,  <span style="padding-left: 100px;"><i>Defendant-Appellant.</i></span></p>	<p><i>On Petition.</i></p> <p><i>On Appeal from Chancery.</i></p> <p><i>Petition of Appeal.</i></p>	10
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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The humble petition of Lillian E. Pfender, the appellant in the above-entitled cause, respectfully shows that your petitioner finds herself aggrieved by a decree *nisi* made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of the Honorable Maja Leon Berry, bearing date the 10th day of January, 1928, wherein the said Carl D. Pfender was petitioner and the said Lillian E. Pfender defendant, in this respect, to wit, that the said decree orders, adjudges and decrees that the petitioner, Carl D. Pfender, and the defendant, Lillian E. Pfender, be divorced from the bonds of matrimony for the cause of extreme cruelty as alleged in the petition, and that the said parties and each of them be freed and discharged from the obligations thereof unless sufficient cause be shown to the Court why said decree should not be made absolute within three months from the date hereof, and insofar

*Petition of Appeal.*

as the said decree orders, adjudges and decrees that the defendant's counter-claim for separate maintenance be dismissed, and your petitioner humbly appeals from said decree which adjudges as aforesaid upon the ground that the same is erroneous, for that the proofs before the Court did not warrant the finding by the Court that defendant-appellant was guilty of extreme cruelty as charged in the petition, and that the proofs before the Court required the Court to grant a decree to defendant-appellant for separate maintenance.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

MERRITT LANE,  
Solicitor of Appellant.

MERRITT LANE,  
Of Counsel for Appellant.

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**TESTIMONY.**

IN CHANCERY OF NEW JERSEY.

*Between*

CARL D. PFENDER,  
*Petitioner,*

*and*

LILLIAN E. PFENDER,  
*Defendant.*

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Transcript of testimony taken in the above-entitled cause before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, November 23, 1927, at 10 A. M.

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Appearances:

Mr. Ralph E. Lum for the petitioner.

Mr. Merritt Lane, by Mr. D. Eugene Blankenhorn, for defendant.

Mr. Blankenhorn: The counter-claim for divorce is withdrawn, but the statements contained therein so far as they relate to the acts of cruelty complained of by the husband, we desire to stand, for the purpose of denial of the complaint in the petition.

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In the summer, your Honor signed an order continuing the arrangement voluntarily made by the husband, but reserving the question of counsel fee, and granting permission to move before final hearing for a counsel fee.

I wish to make that motion now, in order to be in time. I don't want to pass that by.

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*Carl D. Pfender, direct.*

The Court: Did I say make a motion before final hearing?

Mr. Blankenhorn: Yes, before final hearing.

The Court: I will hear the application later.

CARL D. PFENDER, petitioner, sworn.

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*Direct examination by Mr. Lum.*

Q You are the complainant in this case? A I am.

Q Your wife's name? A Lillian E. Pfender.

Q When, where and by whom were you married? A On May 15, 1902, in Plainfield, New Jersey, by the Rev. E. M. Rodman.

Q He was a minister of the gospel? A He was an Episcopal minister.

20 Q And for the last ten years in what State have you lived? A New Jersey.

Q Continuously? A Yes.

Q At what place? A In Montclair, in Plainfield, in Ridgewood, going back to these places at various times, and in Glen Ridge finally, in April, 1920, when I moved there from Ridgewood.

Q Did you build a house there? A No, I bought a house, No. 364 Ridgewood.

30 Q By whom is that occupied now? A Mrs. Pfender.

Q When did you last reside there? A The 1st of October, 1926.

Q Sometime after your marriage what, if any, change arose in your wife's treatment of you?

A She began to find fault with me; at times got very angry and made things very unhappy for me from time to time.

40 Q What was her attitude toward the members of your family, starting sometime after the marriage? A She didn't seem to like them at all;

*Carl D. Pfender, direct.*

at times when we were together, for a holiday or some other occasion, there would be trouble, disputes, and very often the family was ordered out of the house, or obliged, on account of the treatment, to leave.

Q Do you recall any incident of pictures of your mother and aunt in 1912? A Yes, about that year I had pictures on my chifforobe of my mother and aunt, and I came home one day and found them torn up in pieces on the bureau. 10

Q Do you recall a fishing trip to Greenwood Lake, which resulted in trouble? A Yes, in 1914, the first year that I had bought a car, I planned a trip with one of the men at the store, with whom I had taken several trips before, and we were going there for two days on a fishing trip. I was to meet him at the Erie station, in Montclair, in the car. He came up from Forest Hill, where he lived, and at the last moment his wife and two children, about five and six years old, or seven and eight, wanted to come along, so he brought them in the train, and when they got off he asked me if I objected to their going. I said, "Certainly not, there is plenty of room." So we went up together. On the way back, the second day—we went up on Friday and came back Sunday, as I recall it—we came down Bloomfield avenue, and our house was on Mountain avenue, right near there, and Mrs. Pfender happened to be sitting on the side porch and saw us coming down the side avenue in the car, as I went down to Forest Hill to take them home, and when I got back to the house she was furious, and I tried to explain the circumstances just as I have to you here, and she wouldn't listen to it. I went out to the car to get my things out, and the doors were locked and the windows, and I 30 40

*Carl D. Pfender, direct.*

finally had to put up in the garage for several hours, and later in the evening I was—the doors were opened and I was allowed to come in. Then two or three days after that occurrence I had gone to ask for my fishing rod—it was one that I prized very much, and she handed me the pieces—  
10 broken up in about that length (indicating)—

Q Indicating about a foot and a half? A Yes—saying, “There is your fishing rod.”

Q At a later time did the framing of your mother’s and aunt’s picture come up? A Yes, my sister had given me enlarged photographs of my mother and aunt, in round frames, for Christmas presents, and for a little while they were out, and then finally they were put away and she said she didn’t want them around, so I put them  
20 away in a closet.

Q Do you remember a Maine fishing trip in 1923? A Yes, in 1923 I planned a fishing trip for two weeks with this same man I had gone fishing with.

Q What was your condition of health at the time? A I was pretty well run down; I had been working pretty hard and I felt that I needed it; it was something I had always wanted to do, and this opportunity arose, and he was going, and I said, “I will see if I can arrange it.” So I  
30 proposed the proposition to Mrs. Pfender and she didn’t want me to go. Finally she agreed, and then almost every night when I would come home there would be some different story. “No, you cannot go, I won’t be left here alone,” and all that, and so finally I had to tell this man, I said, “I don’t know that I can go at all; things are so at home that I don’t believe I can get away.” The thing came to a pretty definite head on Decoration Day. There was a great dispute  
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*Carl D. Pfender, direct.*

there, after I had made all my plans to go finally, and I remember I left the house and was away for several hours walking, trying to calm myself. Then I came back. I had a fishing license from New York State, because I fished occasionally in the streams of New York—trout fishing early in the season, and a Maine fishing license. I got  
10 home one day, just before I was going, and I found the two fishing licenses torn up in small bits and lying on my bureau. I spoke to her about it, and she said, “I did it; that is all. I don’t want you to go.” So I had to—finally, she said, “Well, all right, if you go I am going somewhere, too. If you let me go to Europe with my son, take a trip to Europe, you can go on this fishing trip.” I said, “All right, if you want to  
20 go you can go; I will arrange it when I come back.” So I had to buy a new fishing license for Maine, and I sent the pieces by mail to Maine—up in Maine, wherever it was, the capital, and when I got back from this trip I bought a new license at the same place, William Mills & Sons, on Park Place, in New York. I found a record of the check for the amount of this fishing license.

Q And have you an entry? A I have an entry in my stub check book there.

Q Which was made at the time? A Which I  
30 made on my return August 1st, after my trip to Europe.

Q Will you explain about the trip to Europe?

A Just before I was about to return, a few days before from Maine, I got a telegram relayed into the camp—I was about sixty miles from the nearest telegraph station at Greenville—a message that there was a telegram for me, so when I got back in the evening from my fishing trip, I telephoned and I received over the wire a tele-  
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*Carl D. Pfender, direct.*

gram to this effect: "If you do not arrange for me to get the money at once for our trip, I will leave you and never come back." Signed Lillian E. Pfender. So I telephoned—I said, "I will give an answer to that"; so I telephoned that I would be home in a few days and would arrange  
 10 everything satisfactorily. I returned on the 17th of June, I think it was. When I got home, I found that she and her son had had their usual falling out.

Mr. Blankenhorn: I object to that.

The Court: Strike that out.

A (Continuing.) I found out that she and her son had had a disagreement as to going. I  
 20 understood it was because the son wanted to lay out certain routes, and she wanted other routes, and that it was all off, and then she said, "Well, how foolish you have been not to arrange to go to Europe with me." "Well," I said, "If I can; I may be able to arrange it; since you have set your heart on it," I said, "I will see what I can do." So I went to my—

Q Did you arrange it? A I arranged it. When I got to my office I found out that my wife  
 30 had gone to the bank with a blank check that I had left two or three years before, when I was away on a short business trip, and she had filled in this check for \$2,000, and presented it at my bank. I didn't have \$2,000 in the bank. The bank wouldn't cash a check like that, anyway, without some inquiry, and the bank called up my partner, Mr. H. B. McKenney, and asked if it was all right to honor the check.

40 Mr. Lum: Never mind going into that.

*Carl D. Pfender, direct.*

Q Did you have any conversation with your wife about that check? A Prior to that?

Q About the check after that; what did you say to her about the check? A I simply told her what I had found out, and I was surprised that she had done such a thing.

Q What did she say? A She said, "I was going to get the money; you didn't leave me the money and I was going to get the money." 10

Q Coming down to 1924, do you remember a taxicab incident? A Yes, in 1924, May I believe it was, Mrs. Pfender was not well, and her doctor, who had been our physician for twenty years or more, recommended a specialist, and in order to be near his office where she could get treatments, she stayed at the New Western Hotel, and she was there for two or three days, and  
 20 then she complained to me—I used to go up to see her every night, and sometimes during the day, and finally she complained that she couldn't stand the treatments, and she was in great pain, and she wanted to see her doctor. So I called her doctor in, and he said, "All right, I will see what I can do for you."

Mr. Lum: We are not interested in anything except the taxicab incident. 30

A (Continuing.) The doctor took her to a nursery, a child's hospital, that night, and provided her with a day nurse and night nurse, so she would be comfortable, and the next morning when I got to the hospital she was all dressed with her things ready to go, and I had a message before I had gone into her room, that the doctor wanted to speak to me, and he telephoned me and said he had been discharged and insulted—  
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*Carl D. Pfender, direct.*

The Court: Don't tell what someone told you. If it was told you in your wife's presence, or repeated by her, you can testify to it.

Q Did you tell your wife what your doctor  
10 had told you? What did you say to your wife?

A "The doctor said that he had been discharged."

Q You told her that? A Yes; he had told  
me that he had been discharged. She found  
fault with my having spoken with the doctor  
at all. I got a taxicab and started down to the  
Twenty-third street ferry, and on the way down  
and became violently angry and hit me in the  
face with her fist as hard as she could.

Q Was it painful? A Yes, it was. She  
20 used her full force.

Q You say she became violently angry; can  
you tell us what aroused the anger; was it your  
talk with the doctor or what? A It might have  
been the talk with the doctor, or the fact that  
she objected to staying there. I cannot tell you  
what the cause was, but I know she took it out  
on me.

Q Did you say or do anything to incite this  
abuse? A Absolutely no.

Q In the late spring or early summer of 1924  
30 how was her treatment towards you? And going  
on up to Westport. A In 1924, we had a cot-  
tage in Westport, New York, and over the Fourth  
of July I was there. I had ordered a new boat  
and an engine which I knew nothing about, and  
we planned to go out. Mr. Dougherty was there  
at the time with his family, and he knew about  
these engines, so I asked him and some of his  
boys to go out with me so I could learn about the  
40 boat. When we came back, Mrs. Pfender was

*Carl D. Pfender, direct.*

very angry about it, and she said she had been  
neglected and hadn't been asked to go, and that  
started trouble, which ended the next day, finding  
fault with the servants, and compelling me to  
take them down to New York that day in the  
train. Nothing must do but I must go with them,  
and she called them all kind of names; they  
10 were Japanese; they had been very good, and  
doing everything for her, I am sure, as they did  
at home, and she stayed there two or three days.  
I didn't hear a word from her, and Mr. Dough-  
erty sent me a telegram, which I didn't receive,  
stating that—

Mr. Blankenhorn: I object.

Mr. Lum: You cannot tell what someone  
else did. 20

Q Then what did you do? A On receipt of  
the telegram I went to Westport, and I knew that  
she was on a train, from the telegram, coming  
down, so I stopped a couple of minutes to see her  
at Saratoga, and I went on up to Westport. I  
got there and got things together and slept in  
the cottage, and started the next morning, and  
drove the car down with the things that were  
left, and got there that same evening.

Q Did you have any conversation with her  
at Saratoga? A I asked her what was the mat-  
ter, and she said she didn't want to stay there  
any longer 30

Q Was she angry? A She seemed to be  
fairly calm.

Q Had she before that made any threats  
about what she would do with the boat at West-  
port? A She hadn't said anything to me about  
the boat; she was very angry just because of  
the boat incident. 40

*Carl D. Pfender, direct.*

Q Do you know whether there was any incident in connection with Mr. Henkel? A Mr. Henkel? Yes.

10 Q Will you tell us what you said to your wife about it, not what Mr. Henkel said to you? You cannot tell what Mr. Henkel said to you unless your wife was present; but you can tell anything Mr. Henkel said to you, that you repeated to your wife.

Q Nobody told me about that incident at the time, because they didn't want to cause me any more trouble than I was in.

Mr. Blankenhorn: I ask that that be stricken out.

The Court: Strike it out.

20 Q Do you remember later in that year, near Christmas time, an incident in connection with your sister, in 1924? A Yes; my sister was invited to the house for Christmas a few days, and we went to the theatre the day after Christmas together, and Mrs. Pfender became very angry at something or other, I don't know what, and that evening when we got home—

30 (At this point the witness was withdrawn from the stand.)

Mr. Lum: I have a witness here from the East Orange High School. May I call him out of order?

The Court: Yes.

*George Henckel, direct.*

GEORGE HENCKEL, sworn for petitioner.

*Direct examination by Mr. Lum.*

Q Where do you live? A East Orange.

Q What is your position? A Teacher.

Q Where? A East Orange High School. 10

Q Were you at Westport in July, 1925? A Yes, sir.

Q 1924? A Also in 1924.

Q Do you recall an incident at the Pfender place at that time? A Very well, indeed.

Q Will you please tell us, in your own way, what you recall of it? A The occasion was near the Fourth of July—as a matter of fact, it was on the Fourth of July. The Pfender cottage was adjoining my own; we had planned with the other cottagers, to have a little ceremony on the morning of the Fourth of July, in which all the cottagers entered very heartily, Mrs. Pfender as well as the rest. It was a ceremony, raising the flag on the morning of July Fourth, and she entered into it very heartily, as did all the rest of the people there, and we had a real gloriously time that morning. In the afternoon, I don't know what transpired, excepting that we had house guests at the time, and later in the afternoon they came to the Inn and said— 20 30

Mr. Blankenhorn: I object.

The Court: Objection sustained.

Q You just tell what you observed yourself or heard. A I observed nothing then, sir.

Q Continue then. You cannot tell, under our rule, what someone else told you, unless Mrs. Pfender was present. A No, she was not; I know nothing of what occurred at all, excepting 40

*George Henckel, direct.*

this—it may have been the next morning, or the following morning after that, I cannot recall, but at any rate, we missed our people next door; we hadn't seen them for some time, and I spoke to Mrs. Henckel about it—

10 Q What did you do? A I spoke to Mrs. Henckel—

The Court: Strike it out.

Q What did you say? A I told her to do something.

Q Do you know what she did? A Yes, she went over to the Pfender cottage, to see if there was anyone there.

20 Q And did you later go over, as a result of what she told you? A I did later.

Q And as a result of what she told you? A Absolutely.

Q What did you find when you got there? A I couldn't find anything except a woman inside who was very bitter against someone.

Mr. Blankenhorn: I object.

30 Q Who was the woman? A Presumably it must have been Mrs. Pfender; there was no one else there.

Mr. Blankenhorn: I object.

Mr. Lum: We are not concerned with anybody else. If it was Mrs. Pfender, I will be glad to hear what occurred; but if it wasn't Mrs. Pfender, if she was not there—

The Witness: It was Mrs. Pfender.

40 Q And no one else? A No, sir.

*George Henckel, direct.*

Q Tell us what took place there. A Mrs. Henckel went over to speak with her; she absolutely refused to speak with anybody.

Mr. Blankenhorn: I object.

Mr. Lum: You cannot tell what anyone else did, excepting just yourself. 10

Q When you went over to the house then, what happened? A I spoke to no one and could not speak to her; I will have to just skip over it, then.

Q All right, if you will. A It must have been then a day or so later that I went over there, and I am not at liberty to state the steps through which we traversed at all?

Q You went over? A Yes. 20

Q What did you find? A I found, speaking for myself, I saw Mrs. Pfender, spoke to her.

Q What took place and what was said? A She refused to allow me to come into the house at first; she was sitting on the front porch at the time, very angry, very angry; she spoke to me and said, "You cannot come in." I spoke to her quietly, and then finally she said, "Well, come in." She said, "Will you help me to get some of these things out?" She said that the whole night before, she had been up all night before packing all her stuff up. Personally, I don't see how she could have done it, but she did do it. Then she asked me if I would look after the checking of these things. She asked me if I would get her tickets down on the train, and gave me the money to get her tickets, which I did. She said she was going over to that train, if she had to walk. I said it would not be necessary for her to do that, because I would be glad to take her over myself, which I did, to- 40

*George Henckel, direct.*

gether with the rest of the baggage that she had. When she was in the house she asked me to go upstairs for a moment; I went upstairs with her there. She said, "I am not without protection here, I can take care of myself," and she opened the drawer and took out a revolver. I was concerned about that for a moment, because she was still in a very agitated frame of mind. She said, "I can take care of myself," and I asked her, I said, "Let me see that a moment, won't you?" She said, "No." I said, "Let me take it just a moment," and she handed it over to me, and I immediately broke it and found it was fully loaded. I ejected the shells—took them all out; she said, "Give my gun back." I had no right to keep it from her, so I returned it to her, but I kept the shells. I think it was either thirty-two or thirty-eight calibre revolver. They had had a boat. The boat had been brought up there, and she said to me, "You can see that Man-of-War out there," she said, "I was going to burn that boat," but she had been fearful of it for fear that in the covering it with kerosene, she might set fire to herself, and that is the only thing that persuaded her from doing it.

30 Mr. Blankenhorn: Did she say that?

The Court: I understand he is telling the Court what she told him.

The Witness: What she told me.

In addition to that, she said that she had been ill, and the trip up and down—it was rather a long hill, perhaps 150 to 200 yards or more, that she had to go down, and rather steep to come up, and she said that might be too much for her, she didn't know whether she could do it or not. Then coming

40

*George Henckel, direct.*

back. I took her in the car and took her over to the station, and at the station she appeared perfectly calm; she quieted down and spoke with the attendants around the depot, and I saw her on the train, apparently in a very calm attitude of mind.

10

Q Did she tell you what was the exciting cause of this rage that she was in? A No, sir.

Q Are you connected with either of the parties by relationship or in any other way? A No, sir, not at all.

Q When was the last time you saw her? Do you still live up at Westport? A I do not live at Westport.

Q Do you go there in the summer? A Yes.

Q Have they been there the last couple of years? A Not the last two summers.

20

Q You kept up your association with them since then? A Never have had at any time.

Q Will you tell the Court what you observed during the summers of 1924 and 1925, and any other time before, if you knew Mr. Pfender, as to the type of man and kind of man that he was, his disposition and nature? A We always thought a very great deal of Mr. Pfender; never known him at any time but what he has always acted the part of a perfect gentleman, and quiet, willing to assist in any way that he possibly could everybody that was there, and thought of very highly; by not only the cottagers there, but by the people in the village.

30

Q Did you ever observe any evidence of profanity on his part? A Absolutely not.

40

*George Henckel, cross.*

*Cross examination by Mr. Blankenhorn.*

Q But you didn't think highly of Mrs. Pfender? A Absolutely; we always thought highly of her.

10 Q You thought very highly of her, too? A Absolutely.

Q And this incident that you spoke of, July 5th or 6th, was the only time you ever saw her angry? A That is the only time I ever saw her angry.

Q And the room where she had this revolver and said she could protect herself, what room was that? A That was upstairs in the—it was one of her own rooms there.

20 Q Was it a bedroom? A Yes.

Q A bed in it? A It had all been dismantled preparatory to leaving.

Q Double bed? A Yes, nothing but double beds in the cottages.

Q You don't know whether that gun was Mr. Pfender's gun? A I could not say.

Q You had never seen it before? A No, sir.

Q And she said she could protect herself? A Yes.

30 Q When just prior to that incident had you last seen Mr. Pfender? A The year before, when he had been up to Westport.

Q You had seen him on the 4th of July? A You mean just prior to this incident?

Q Yes. A I had seen him that morning, I think; it must have been the morning of July 4th, because he was there with the rest of the cottagers.

40 Q You didn't notice any estranged relations between him and Mrs. Pfender? A No, because

*Carl D. Pfender, further direct.*

everybody was entering heartily into that occasion.

Q At the time that she said she wanted to burn up the boat, at the time she showed you this revolver, Mr. Pfender wasn't there? A No, sir.

Q Didn't you ask Mrs. Pfender where her husband was? A No, sir; why should I? 10

Q But you didn't? A No, sir; it was no concern of ours.

Q Did you see the servants? A No, sir; there were none there.

Q And she was all alone in the house? A She had been alone the previous night.

Q How do you know that? A She said so.

Q She had been alone all the previous night? A Yes; we were concerned about her, because we didn't know whether she had any food in the house or she didn't have any food in the house. 20

Q Did you know where her husband was? A No; why should I?

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CARL D. PFENDER, recalled for further

*Direct examination by Mr. Lum.*

(Last question and answer repeated.) 30

A (Continuing.)—in the evening, Mrs. Pfender became violently angry and talked very unkindly to my sister and of my family and myself, and my sister took exception to it, and she finally—when I told her not to say anything, she went upstairs to her room.

Q Who? A My sister went upstairs to her room, and did not undress, as she told me later— 40

*Carl D. Pfender, further direct.*

Mr. Blankenhorn: I object.

Mr. Lum: Never mind that.

A (Continuing.)—she went upstairs, and the next morning when I got up, she had gone and had left a little note saying she had left early in the morning. 10

Q On these occasions when your sister was there, was she there uninvited or by invitation?

A Always by invitation of either my wife or myself.

Q Coming down to 1925, do you recall an occasion in connection with the locking of your sleeping quarters? A Yes.

Q Tell us about that. A Mrs. Pfender became angry at something or other and went in the room and locked the door. This room where she slept led to the sleeping porch, where I slept, and I told her that if she did not open the door so I could get into my sleeping quarters, that I would break the door down, and she refused, so I pressed against the panel, and the center panel of the door came out, and I went in. 20

Q Did you use any offensive language toward her, or did you threaten her at that time? A Absolutely no.

Q Coming on down now to a later time, what was her treatment of you and her attitude toward you, quite continuously, as time went on; did it get better or worse? A It got worse. 30

Q In what respect? A She found more fault all the time with me and made things very uncomfortable and unpleasant. She would say that she overheard remarks about my personal appearance; that she had heard people criticise my ears; said that she had heard in the church, where I was a vestryman at that time, and some 40

*Carl D. Pfender, further direct.*

of the vestrymen when they would see me, would hold their hands up to their ears this way and waggle them, and say that I looked like a donkey. She many times wanted me to have an operation on my ears, because of my appearance, and said my mother didn't know how to take care of me, or I would never have had such big ears, and she wanted me to change my name, because it was a German name, and spell it the English way, because she was English. 10

Q Did you ever conceal anything from your wife, or did you always tell her of all your goings and doings? A I always told her everything.

Q And did she make accusations against you in reference to your conduct with others? A Yes.

Q Did you at the time have a horse? A I did. 20

Q Did you go horseback riding in the morning? A I did.

Q Where? A In the Essex County Park, in Montclair.

Q Did she make any accusations against you in reference to that? A Yes.

Q About when? A It was in the spring of 1926, she accused me of riding in the park with women; said that she had hired a detective to follow me, and went into great detail as to how she accomplished the fact, and that he had followed me, he rode a horse himself; he saw me meeting women up there, and said that I was doing it constantly. 30

Q As a matter of fact, did you ever? A Never, but once, that I recall, did I ride with a woman in the park, and that was an occasion when a certain woman, a young girl she was, came up when I was riding with two other men; 40

*Carl D. Pfender, further direct.*

these other men knew her much better than I did; I simply rode along with the other man and she went ahead with the other one of the two.

Q When your wife spoke to you, did you tell her that? A I did.

10 Q Did you tell her that on no other occasion had you met any other woman? A I did.

Q Did that appease her, or did she continue the accusations? A She continued the accusations; she didn't believe it, and she had proof of it from the fact that she had heard.

Q She complains in her papers of your having told her of your having been driving with a young lady and of having taken dinner or lunch with someone who was employed in your office? A I did.

20 Q You informed her? A I did.

Q —of every time you were ever with anybody? A Yes.

Q She said that you said that you were invited with someone else; did you ever tell her that? A Absolutely no.

Q Were you ever invited with anybody else? A No.

30 Q Coming down, now, to later in 1926: do you recall any incident of Easter Sunday? A Yes, on Easter Sunday I ordered her a bunch of violets from the florist, and when they came on Easter morning, she refused to wear them, because she wanted some other kind of flowers.

40 Q And was your wedding anniversary May 15th? A Yes; our wedding anniversary I ordered a box of her favorite roses from the same florist, and when I got home that evening, the box was lying below the front steps unopened, where she had thrown them.

*Carl D. Pfender, further direct.*

Mr. Blankenhorn: I ask that that be stricken out, unless he knows.

Q How did you know that she had thrown it there? A I cannot tell, but it was delivered to the door and there was no one else in the house to receive it. The florist wouldn't have thrown it down ten feet from the doorway. 10

The Court: You don't know of your own knowledge who threw it there?

The Witness: No; I know that it was there.

Q In that same May, 1926, was there another incident of your being locked out of your room? A Yes.

20 Q When was that? A I was locked out of the room, or she made an attempt to lock me out of the room, and I pushed the door in; I put my foot in it before she could get it locked, and she tried to push me out. My hand just touched her in trying to force me out, and she immediately jumped to the telephone, which was three feet away from the door, and called up the police station and said, "This is Mrs. Pfender; I want you to know that my husband has struck me, and I want you to know about it." 30

Q Did you strike her? A I did not.

Q Coming on down that season, into August, what was her attitude toward you and her treatment of you continuously? A In August she became very much worked up. It was after I had this episode about this young woman, and she persistently nagged me and found fault with me and wanted me to bring a meeting around between this young person and herself and myself so she could settle the matter. 40

*Carl D. Pfender, further direct.*

The Court: What episode are you referring to?

The Witness: In August, 1926; it was after I had told her and admitted that I had gone with this young woman, one of the employees in our office, and I told her that I had been to dinner with her several times, and that I had on a warm evening, when we had been working at the store, I had taken her on a ride. All of these places were the most public places, where other people were around.

Q And as a result of this, what did she do in August, 1926? A She constantly raved at me, and annoyed me and kept after me, and finally she told me that she had stood over me with a revolver when I was asleep, and that it was her intention of killing me, but she decided finally not to. Things got so very bad, my health began to break, I couldn't sleep, I was nervous; I went into another room to sleep; I locked all the doors, and there were two beds in this room and I slept in the first one; I was afraid that she might shoot me through the door.

Mr. Blankenhorn: I object to this.

Mr. Lum: I think it is extremely important.

The Court: The objection is overruled.

A (Continuing.) I changed the position of the bed for fear that she might shoot me through the door, and I did that each night as long as I continued to live in the house after that.

Q Do you know whether there were any revolvers in the house? A Yes, there were.

*Carl D. Pfender, further direct.*

Q Did you ever buy or own a revolver in your life? A Never did I own a revolver in my life, except one that was bought at her earnest solicitation after I repeatedly told her that I did not want a revolver in the house.

Q When was that? A That was, I should say, around 1921 or thereabouts, and that revolver was bought with the express purpose of giving it to the gardener.

Q Was it given to the gardener? A It was given to the gardener, and he had it. I never owned a revolver of my own in my life.

Q In September, 1926, did her conduct toward you and her treatment of you have any effect upon your health? A Yes, I was so nervous and I had lost weight; I was in such a condition that I couldn't sleep; I don't think I was ever in such a condition.

Q Was there any other cause whatever for your condition, mentally and physically, except the treatment of your wife? A No, absolutely not.

Q When did you leave the house? A October 1, 1926, I think was the exact date.

Q A few weeks thereafter, what, if any, change occurred in your general condition of health and mental state? A I began to gain weight right away, and today I am at least ten pounds heavier than I was in my best condition ever since my marriage.

Q You cannot tell what was said in answering this, but will you tell me whether you were informed by others of conversations that they had had with your wife? A Yes.

Q And as a result of that did you have a conference with me as your attorney? A I did.

*Carl D. Pfender, further direct.*

Q Were you advised to do anything with reference to an examination of your wife?

Mr. Blankenhorn: I object as immaterial.

Mr. Lum: They set up in their papers that there was an attempt to railroad this woman to an insane asylum. I think under the pleadings it is admissible.

Mr. Blankenhorn: Fix the time.

A I was advised.

Q Fix the time. A During October, 1926.

Q As a result of the advice which you received, did you consult any doctor? A Yes.

Q Who? A Dr. Washington and Dr. Beling.

Q And do you know whether they made an examination of your wife? A Yes, they saw Mrs. Pfender several times.

Q Were you at that time trying to have your wife adjudicated insane? A Absolutely no.

Q Your wife was represented by what counsel at that time? A I think it was Mr. Goodell, Edwin B. Goodell, of Montclair.

Q Will you tell us whether or not you made any offer to pay expenses if your wife went to a sanitarium?

Mr. Blankenhorn: I object; that is not binding on this woman. I think it is immaterial.

The Court: I think that is a little far-fetched.

Q Were you guided by the advice of the doctors in your treatment and conduct? A Yes.

Q Did you yourself, or did you know of any men coming up to the house, as alleged in the

*Carl D. Pfender, cross.*

papers, in an attempt to have your wife taken away at night? A Absolutely not.

Q Do you know of any such incident? A No, sir.

Q Or have anything to do with it, directly or indirectly? A No, no attempt was ever made to take her away by force.

Q Was there at any time anything that you could have done, that you did not do, to make for peace and harmony in the household? A No.

Q Will you tell us whether or not it was possible for you to have gone on beyond the time that you did, under the conditions? A I went the limit; I couldn't continue it further.

Q Were there any children born of this marriage? A No.

*Cross examination by Mr. Blankenhorn.*

Q Do I understand that this condition of claiming and accusing you of going out with women dated back several years? A No, the accusation that I was going out with a woman in the park was only in 1926.

Q September of 1926? A No, it was in the spring of 1926.

Q And this very episode with this young woman that you took out riding and to dinners and so on, when did you tell that to Mrs. Pfender first? A In Westport, in August.

Q And that was the first she knew of it? A The first she knew of that particular incident, yes.

Q There were several—were there several incidents? A Within a few weeks, yes, right then at that time; I admitted that to her and told her.

*Carl D. Pfender, cross.*

Q You told her that this had been going on for some time? A I told her that on four or five, possibly six occasions, I had gone to dinner with this person.

10 Q She had been asking you, had she not, what was the difficulty between you? A What was the difficulty between us?

Q Yes, she had been asking you that? A Not that I recall; she wanted to know what was the trouble in the spring.

20 Q And just out of a clear sky you said to her that you had been going out with this young woman? A She accused me of it. She said that she had had people follow me and had seen me going out; that I had stayed out all night on various occasions, and she wanted to know about it.

Q And she told you, did she not, that the automobile was out of the garage at night? A Yes, she told me that.

Q And she wanted to know about that? A She said she had me checked up on the gasoline that I was using, and that I had been out all night many nights.

30 Q And she asked you about that and then you told her you had been out with this young lady? A I told her about the few occurrences.

Q And she became greatly excited? A Yes; she had other cause for excitement, though, at the same time.

Q What was it in May of 1926, that made you propose to her that you separate? A She wanted to know if I wouldn't make a settlement on her so that she could run the house and stay there, and said, "You can go out."

40 Q She wanted you to give her \$100 a month, didn't she, for pin money or house money? A

*Carl D. Pfender, cross.*

No, she wanted me to give her a certain sum; I think it was \$100, and I said, "All right, I will give you \$100 for your own use."

Q Are you sure you said that? A Yes.

Q And you had been giving her \$10 a month up to that time? A In cash, yes.

10 Q And she had said that that wasn't enough; wasn't that so? A Yes, she seemed to want to get all the money she could out of me at all times.

Q She worked very hard, didn't she, with this housework? A If she did, it was her own fault; I provided her with plenty of money and with servants which she couldn't keep.

20 Q I show you a photograph and ask you if that is a photograph of the house at Glen Ridge? A It is.

Q This portion of the house that is nearest, on the second floor, is that the sleeping porch which you have referred to? A Yes.

Q And is that one complete room across the whole house? A Yes, from this point over here (indicating), it is one room.

(Photograph shown witness is marked Exhibit D. 1 for identification.) 30

Q So the only way you can get into that is from the bedroom? A Yes, from the bedroom.

Q And it was into that sleeping porch that you wanted to go to sleep this night when you broke the door down? A Yes.

40 Q When at any other time had you slept in the other bedrooms in the house? A On occasions when I had trouble with Mrs. Pfender. Very often I would have to make my own bed 40

*Carl D. Pfender, cross.*

where I could and sleep there, when she was locked in the room.

Q There were guest rooms, were there not?

A There were other rooms, but my sleeping porch was my particular place where I slept. I slept even in the winter time there, as long as I could. 10

Q And on this particular occasion that you have referred to, she had had a quarrel with you about something, and she had run into her room and locked the door? A Yes.

Q She didn't threaten to kill you that night? A No.

Q And you were not afraid that she was going to kill you, were you? A No, I was not.

Q You broke right into the door, right in through the door? A I had had so many occasions when I was locked out of my bedroom, for no cause whatsoever, that I made up my mind it was time for me to assert my rights. 20

Q And so you broke into that room; there is a room adjoining that, isn't there, into a bathroom or some other room, and from that into this place where she keeps her pets? A Yes, there is another front room.

Q And a door leading out of her bedroom? A A door leading from her bedroom into the bathroom, which connects with the other front room. 30

Q Do you remember a time when that door was broken down? A Which door?

Q The door either from her room into the bathroom, or from the bathroom into the room where the pets were kept? A No, it never was.

Q Do you remember a time when you placed her in there after a quarrel? A No. 40

*Carl D. Pfender, cross.*

Q Never did that? A No, I never placed her anywhere.

Q There was a quarrel, was there not, that night that you spoke of, when your sister was there, this Christmas time? A There was no quarrel except what my wife picked; nothing had been done by either of us to cause any quarrel. 10

Q That is to say you were talking quietly and she came in? A Yes.

Q Your sister's name is Helen? A Yes.

Q Did that anger on the part of your wife continue after that time toward your sister? A Yes.

Q So that her name was never mentioned between you? A I never mentioned my sister's name or any of my family's name, when I could avoid it. 20

Q Never wrote to your wife about her? A I possibly have, yes.

Q Even though she was very angry at your sister and wouldn't allow her to come around, still you wrote to your wife about her? A She would get over these spells and then we would make up again, but I kept them apart as much as I could. 30

Q Then she did make up with your sister? A Yes, she would make up with me, she would make up with anybody after she got over these fits.

Q You don't think she is insane, do you? A No; I am not an expert on that subject; I cannot tell you.

Q But you had Dr. Beling and Dr. Washington sign a certificate of some kind, did you not?

A They may have issued some certificate. 40

*Carl D. Pfender, cross.*

Q Don't you know that they did, Mr. Pfender? A They showed me some kind of a thing.

Q Don't you know that it was adjudging your wife insane? A No, I don't know that.

10 Mr. Blankenhorn: I call for the production of the paper.

Mr. Lum: I have not got it; it is in the hands of the doctor. Dr. Washington and Dr. Beling are both available, and can give you their opinion; it never was filed.

Mr. Blankenhorn: Will you state what the paper was, Mr. Lum?

20 Mr. Lum: I cannot tell you; I don't recall it. At any rate, they signed; it was their opinion that the woman was not mentally competent, in my judgment; I don't recall the detail. They have it; you can call for it.

Mr. Blankenhorn: And providing for her commitment?

Mr. Lum: No, nothing filed.

Q Didn't you go up to the house that night, of October first? A I don't recall.

30 The Court: What year?

Mr. Blankenhorn: 1926.

The Witness: I don't recall whether I did or not?

40 The Court: One other date. You said that in the summer at Westport you told your wife about this occasion when you had been out to dinner with some other woman; was that the summer during which all this trouble occurred, about which you have testified?

*Carl D. Pfender, cross.*

The Witness: It occurred in 1926.

Mr. Lum: That wasn't the one Mr. Henckel testified to; that was in 1924; and there were other occasions in 1925.

The Witness: This was in 1926.

10 Q As I understand it, the date when you told your wife was August 7, 1926, at Westport? A It was about that time, I should say.

Q About the ninth you closed the place at Westport and came home; is that correct? A About that time.

Q And Mr. Ross, the architect of the Westport House, was present? A He was.

Q You just told your wife in the bedroom upstairs of these affairs? A Yes.

20 Q And then you came downstairs? A Yes, probably; I don't remember.

Q And Mrs. Pfender was crying, wasn't she? A Yes, I believe she was.

Q And she told Mr. Ross what she was crying about? A She spoke to him, I imagine; I don't recall what she said.

Q And didn't you say that the affair hadn't gone very far? A I don't recall saying any such thing.

30 Q Didn't you say to Mr. Ross that there wasn't anything wrong in your taking this woman out to a restaurant and so on, and to public places? A I possibly did.

Q And didn't he tell Mrs. Pfender that he would pack her things for her? A I don't recall that he did, but he did assist us.

Q And he came home with you, didn't he? A He drove home.

40 Q Mrs. Pfender was ill immediately after you told her that and called a doctor? A She called a doctor, as I recall it, yes.

*Carl D. Pfender, cross.*

Q Dr. Hughes, of Westport? A I think it was Dr. Hughes. Yes, it was Dr. Hughes.

Q And she fell, didn't she, striking her head against the bedpost? A I don't recall that.

10 Q But you do recall that she was in bed and had to have a doctor? A She was lying there on the bed, yes.

Q Did she faint at any time during this trouble between August 7th and August 9th? A Yes, she was—I don't know whether she fainted; she was lying there on the bed, I know.

Q Who called the doctor? A I did, or Mr. Ross, I don't recall which.

Q She didn't know what was going on, did she? A I am sure I don't know.

20 Q And then you drove home by automobile? A Yes.

Q Three hundred miles in one day? A Yes.

Q Although your wife was sick? A My wife wanted us to keep going; she didn't want to stop; she didn't want to stop for dinner; I insisted.

Q She wanted to get home? A Yes.

Q When she got home did she call a doctor? A No, not that I recall.

Q You continued to live with her right up to the first of October, didn't you? A Yes.

30 Q And you occupied the bedroom with her? A At times, I did, yes.

Q And it is a fact, isn't it, that you had sexual intercourse with her up to September, 1927-1926? A I am sure I don't recall the date. I don't think it was as late as that; it couldn't have been as late as that.

Q But at any rate, it was after you had returned from Westport? A Yes.

40 Q You received letters from Mrs. Pfender during the time that she was at Westport in 1926

*Carl D. Pfender, cross.*

prior to your arrival there, at or about the seventh of August, did you? A Yes.

Q Have you those letters with you? A No, I haven't.

Q What became of them? A Probably they were destroyed.

10 Q What did you do with them? A I probably tore them up. If there were any left at home, I was unable to find them when I went back into the house.

Q Did you look for them? A I looked for letters and I couldn't find them.

Q Why? A I don't know why; I suppose they might have been taken. I don't remember even that I had the letters. I probably wouldn't have the letters at home, anyway, because they were addressed at the store.

20 Q You don't know whether you looked for the letters? A No, I don't know that I had any special reason for looking for letters.

Q But you did look for your wife's letters to you? A No, I couldn't say I did; I don't remember that there were any there. I don't think one letter was directed to anywhere but the store that I received.

Q When you say "store," you mean your place of business? A Yes.

30 Q What business is that? A Woolens.

Q Woolen broker? A Commission merchant.

Q You answered her letters pretty regularly, didn't you? A Yes.

Q These times when you occupied separate bedrooms, when do you recall was the first time that you occupied a separate bedroom? A I don't recall when it was; many times.

40 Q Was it as far back as May, 1926? A I slept in the sleeping porch very steadily, all the

*Carl D. Pfender, cross.*

time. She was not able to sleep out there, because it was too much air there; she slept inside, even in the summer. She would complain very often when she went out there, on a warm night, that she felt the air too much, and would go in.

10 Q You occupied the guest room, didn't you, at times? A At times I did.

Q And you roped the door so no one could get in? A I did after she told me—

Q Aside from that you can. A Yes, the catch wouldn't work that night, so I roped it as well as I could.

Q She never pointed a gun at you and tried to shoot you? A No, not that I know of.

20 Q There were at least four times, then, when you broke into her room, weren't there? A I don't recall of but two, which I mentioned; once I broke into her room; once I put my foot in, so she couldn't lock me out of the room.

Q That was the time she telephoned for the police? A Yes.

Q Did the police come? A No, they didn't pay any attention to her.

30 Q Tell me how far the telephone is from the door of the bedroom? A I should say it was about three feet. When the door is open this way (indicating), it is within a foot or two—within a foot of the telephone table, a little telephone table there.

Q You were just trying to go in to go to sleep; do you recall whether it was at night or not? A I think it was. That was my only object to get in; it may have been during the day; I cannot tell you that.

40 Q But when she took up the telephone, didn't she say she would call the police if you didn't

*Carl D. Pfender, cross.*

stop? A No, she said, "Give me the police headquarters."

Q And then didn't you knock the phone out of her hand? A I absolutely did not.

10 Q You didn't do anything to try to prevent her from calling the police? A No, sir. The only thing I said, "Don't do it; what is the use of making public—making public anything of this sort?" I may have said that; I cannot recall.

Q When was it that this first affected your health? A When she began to be unusually—

Q I mean the year? A 1926.

Q Not before that time? A Not to the extent that it had during that year, because things started early in the spring, and one thing led to another.

20 Q As a matter of fact you wanted her to sell the Glen Ridge house and get out and you would then give her an income and make her independent? A No.

Q Isn't that so? A No, it is not so.

The Witness: May I add something to that?

Mr. Blankenhorn: No.

30 Q I show you these sheets of paper and ask you if that is not in your handwriting? A Yes, it is.

Q Did you write that to Mrs. Pfender in May, 1926? A I don't know what the date was; I wrote sometime around that.

Q Let me call your attention to this statement, and see if this doesn't refresh your recollection:

40 "In your note of May 22 you say that all this trouble could have been avoided if you had given me a private allowance of \$100 a month."

*Carl D. Pfender, cross.*

Doesn't that refresh your recollection as to the date when that was written? A Yes, I should say it was about that time, because it was in May that I started to give her the \$100 a month.

Q Do you still say that you didn't want her at that time to separate from you and take \$6,000 a year? A Absolutely no; she suggested that she might continue right in the house there, and I said that it was a very expensive proposition to keep that house running.

(Letter just referred to marked Exhibit D. 2 for identification.)

Q This was a note which you had written to her after a quarrel that you had had with her? A It was a note that I had written after she had written something to me.

Q You haven't the note she wrote to you? A No, whatever was left in the house was gone; I found nothing there when I went back.

Q How did you deliver this to her? A I handed it to her probably; I had a duplicate copy of it, which disappeared.

Q When did you begin to build the cottage at Westport? A I think it was probably about sometime in April, as soon as the weather permitted in that section.

Q Of 1926? A 1926.

Q You stopped work on that house in May, did you not? A I did.

Q Why did you do that? A Because she accused me of meeting with this woman in the spring, and had persisted in claiming that I was unfaithful to her, and the episode about the roses and violets at Easter, and all of that. She didn't seem to me to want me to have the horse at all,

40

*Carl D. Pfender, cross.*

to have that recreation; it was the only recreation that I had.

Q Did you know this young lady that you rode with that morning? A I know who she was, yes.

Q Then after that ride you came home and told her about it? A No, there was no occasion for me to tell her about it.

Q How did she find it out? A She accused me of riding with women in the park and having had a detective to follow me to prove that I was doing it, and I said, "I have been absolutely with no women, with the exception of this," and I stated the circumstances.

Q And when was it that you ordered the work at the Westport house to be begun again? A I don't recall; I should say it was along in June sometime.

Q And she was to go up there and be there while the work was going on? A Yes, that is what she wanted to do. I had engaged a cottage the first of the season, along in February, a cottage that belonged to my cousin.

Q She went to Westport? A Yes.

Q She didn't make any accusations against you by letter to you, did she, during that time that she was at Westport? A Not that I know of, no, sir.

Q And everything was lovely between you? A Apparently so.

Q You wrote her almost every day, didn't you? A I wrote her very often.

Q I want to show you these letters, Mr. Pfender, if you will look them over.

Mr. Lum: You may offer them in evidence. I know his handwriting.

40

*Carl D. Pfender, cross.*

(Letters offered and marked Exhibits D. 3 to D. 19, inclusive.)

Q When you told her at Westport about this young woman, didn't she say that she couldn't understand how you could have written her such  
10 loving letters, and to have been going about with someone else? A Probably she did; she used to say those things.

Q Why did you want her to go to the hospital that you have referred to? A When was that, please.

Q At the time she discharged her doctor and she had this quarrel with you in the taxicab? A She demanded that I call the doctor; she was in great pain at the New Western Hotel, so I did,  
20 and he came there, and he recommended that she go to this hospital where he could see what he could do for her. It wasn't at my suggestion at all. I did it entirely at her suggestion.

Q Her health was delicate, wasn't it? A She complained of some sort of a sciatic trouble.

Q It had been so for some time, hadn't it? A She complained a great deal; always has complained a great deal.

Q And you were very solicitous about her health? A I always had been, and spent fortunes on doctors, gladly.  
30

Q Isn't it a fact that just prior to your leaving the house she had had a physical examination? A Prior to what time?

Q In August or September, 1926. A Had a physical examination?

Q Yes. A I don't really recall.

Q Don't you recall her showing you this letter from Dr. Houser, and this letter to Dr. Houser from Dr. Hawks? A I don't recall  
40

*Carl D. Pfender, cross.*

that these were shown to me; they may have been; I don't recall it.

Mr. Blankenhorn: I ask to have them marked for identification.

(Marked Exhibits D. 20 and 21 for identification.)  
10

The Witness: My recollection is that I didn't know that she had been to these doctors, until I got the bills, which I had to pay for. I know I got the bills from Dr. Hawks and Dr. Houser.

Q Didn't you want her to have some other examination at this time, September, 1926?

A I don't recall it at all, except that I felt that she wasn't right and that I wanted to get the best advice that I could, and it was on the advice  
20 that I got from my attorney, that Dr. Beling and Dr. Washington tried to—see her.

Q At whose advice was it that you left the house? A My attorney and my friends, when they knew the circumstances, said, "You cannot continue as you are now; you are a wreck; you are just going to pieces if you don't get out of it."

Q Did you tell them that you were still suffering from insomnia? A I told them that I  
30 couldn't sleep on account of the condition in the house. Nobody need to be told that; they could see the condition I was in.

Q Did you tell your friends, your attorney who advised you to leave, did you tell them the cause of your mother's death? A No, I had no occasion to tell them.

Q Will you tell us what was the cause of your mother's death? A She had an operation on her eye by Dr. Shepard, of New York City,  
40

*Carl D. Pfender, cross.*

and from some careless handling, evidently she got an infection.

Q Where did she die? A She died in Bloomington. This infection affected her mind so that she was taken there.

10 Q She was out of her mind? A I think she was.

Q You didn't tell them that? A I don't know as I had any occasion to tell them that.

Q You told them that your wife was quarrelsome and was accusing you of all these things and you didn't tell them that? A I didn't tell them that, probably. I don't see why I should tell them such a thing. What did that have to do with my wife?

20 Q You didn't tell them that in August, at Westport, 1926, you had confessed to your wife that you had been going out with a young woman; you didn't tell that? A Friends?

Q Yes. A I certainly did.

Q You did tell them that your wife was ill as a result of that, and had to call a doctor? A No; you mean at Westport?

Q Yes. A I probably mentioned the fact; I probably told them the whole circumstances; there was no reason to keep it secret.

30 Q And they advised you to leave? A They advised me to leave, after my life had been threatened and I had to move my bed to keep out of the way, and when my health broke down from the nagging and constant friction in the house that I couldn't stand it any longer.

Q Are these friends here to testify for you today?

Mr. Lum: You will hear from them.

40 A Yes, I have some friends here.

*Carl D. Pfender, cross.*

Q Will you name the ones that you told?

Mr. Lum: I object. We are not concerned with the husband's insanity.

The Court: I see no reason why the question which is asked is not permissible, especially in view of the testimony which preceded it. 10

Mr. Lum: I have no objection to it. I simply make the objection to keep it within the issue. I have no objection to anything in this case.

A I told my partners, three of them, and I spoke to Mr. Dougherty.

Q Is he the rector of your church? A He is.

Q Is that all? A I don't recall that I had any occasion to speak to anyone else; I had so few friends left. 20

Q Mr. Pfender, you never spoke to anyone else besides the persons you have named, and Mr. Ralph Lum? A I don't recall any other names; I may have spoken to other people, but I don't recall that I did.

Q So that when you left the house on October first, you had made up your mind not to return?

A Absolutely no; I wouldn't say that. 30

Q That was the day that you didn't return?

A That was the day that I didn't return, because things had gotten so bad that I couldn't see any future; I had been through so many years of this thing, that it got worse and worse as time went in; I was simply at my wit's end. I tried to live peaceably for years, but did not succeed.

Q Did it affect your health before 1926? A My health was such that I never was really well; 40

*Carl D. Pfender, cross.*

I tell you when I got out of this I immediately started to pick up.

Q Isn't it a fact that in May, 1926, your health was better than it had been for some years previous? A I should say that it was.

10 Q Don't you know that it was? A I don't recall that it was any different from my usual condition; I was under a constant strain with conditions at home.

Q Don't you remember that you went to the Life Extension Institute for examination? A Yes, sir; I had been going to them for years.

Q I show you the report of the Life Extension Institute, dated June 21, 1922, and ask you if you didn't have an examination at that time, and if that isn't the report of that examination?

20 A I frankly tell you that I had examinations from year to year for several years. This, I presume, is a copy of it; it may be the original.

Q Won't you look at it and tell me if it is? A I cannot tell you whether it is or not; I suppose it is; it is similar to one that I had received; that is dated June or July, 1922.

Mr. Blankenhorn: I offer this for identification.

30 (Marked Exhibit D. 22 for identification.)

Q I show you another report of the same Institute, dated January 24, 1923, and ask you if you didn't receive that, and if that wasn't the report of an examination which you had? A I received similar reports.

Mr. Blankenhorn: I offer that for identification.

40 (Marked Exhibit D. 23 for identification.)

*Carl D. Pfender, cross.*

Mr. Lum: Mark them all.

(Similar reports marked Exhibits D. 23 to D. 35, inclusive, for identification.)

Q After you received this report in 1922, in June, you went to a physician, didn't you? A I don't recall; I had been to Dr. Holland, I don't recall the year; possibly that was the year. 10

Q Just read this Exhibit D. 27 for identification, the first paragraph, and see if that does not refresh your recollection, that your health was greatly improved at that time? A It is just the usual form that these people issue. I have given up their examination of late, because they are stereotype examinations.

Q You think these were just stereotype? A Yes. 20

Q But you continued them right up to the year 1925, didn't you? A I did.

Q In fact, right up to 1926? A I don't remember the last date; I know I haven't had one this year.

Q The last date I have here is April 19, 1926. A That was for an examination in 1925, and that was a urine examination that came quarterly during the year. It is not very well thought of by the average physician. 30

Q The last general examination you had was August 4, 1925, or thereabouts? A I imagine so.

Q And at that time you were in very good condition as far as any organic condition was concerned? A Yes, but I was thin and nervous.

Q You are not fat now? A No, never will be, Thank God.

Q When in 1924, at Christmas time, your sister was in the house at Glen Ridge, wasn't the 40

*Carl D. Pfender, cross.*

trouble over the fact that the piano man hadn't fixed the piano? A I don't recall any such incident.

Q Don't you recall going to the theatre? A Certainly, I mentioned it in my testimony.

10 Q And you and your wife and sister went together? A Yes.

Q Isn't it a fact that you and your sister went to New York and your wife followed on a later train? A Not that I recall. As far as I recall, we went together. I absolutely would be willing to swear that such a thing wasn't the case. We went together, as far as I remember.

Q What was the trouble that your wife had with your sister? A That was in 1924?

20 Q Yes. A I don't recall any other; I kept them apart as much as I could. For years back I kept my family away from my home as much as I possibly could. In fact, to such an extent that they complained because they never saw me.

Q But you considered it a matter of good policy to keep them away? A I certainly did, because every time we got together there was trouble.

30 Q But they continued to send you gifts and send your wife gifts? A They kept up the show of good fellowship for my sake.

Q At the time of this difficulty, didn't Mrs. Pfender take exception to your sister talking with you about her when she wasn't present? A Probably she did.

Q Wasn't that the cause of the quarrel? A I don't know at this time, but that is a very customary thing, to accuse me.

40 Q That is, she didn't want your sister to talk about her when she wasn't present? A I

*Carl D. Pfender, cross.*

don't think such a thing ever occurred, because I don't recall that my sister ever talked against my wife or about my wife on any occasion.

Q That is what Mrs. Pfender thought? A Possibly she thought that many many times, without any cause.

10 Q Didn't your sister want to come to stay with you? A No, I never would have allowed it if she had any such thought.

Q After this Maine fishing trip, you did go to Europe? A We did.

Q I show you a statement showing your personal account—three pages which purport to show your personal account, and ask you what that is? A Those were the conditions of business on those dates.

20 Q Isn't that the condition of your personal account with your firm?

Mr. Lum: I purposely didn't go into any of this so as not to take up the Vice-Chancellor's time. The matter of finances can be taken before Mr. Bindseil as Master. You can go into that; all the books will be put at your disposal. I thought there was no use of my taking the Court's time on that. I didn't touch it purposely, and you will be given full opportunity to inspect the books.

30 Mr. Blankenhorn: It appears by the letters that the difficulty was principally financial difficulties between these people and the complaint that the defendant had spent his whole income and all of his money. I want to show by this statement that that isn't the fact.

*Carl D. Pfender, cross.*

Mr. Lum: We haven't attempted to prove any of that, so I don't think you need defend it, unless it is charged.

The Court: There isn't any proof of it.

10 Q I show you a check dated June 14, 1923, and ask you if that is the check that you referred to as having been given by you to your wife? A Yes, I believe it is.

Q And will you indicate on that check what are the portions of it that were written in by you? A My signature only. This is all Mrs. Pfender's handwriting. I always put the number on my check, when I know what the number will be. All of this (indicating) is her handwriting. This (indicating) is mine, the signature, and the only thing on there that I wrote.

(Check offered in evidence and marked Exhibit D. 36 for identification.)

Q At the time she presented that, you were in Maine? A I was.

Q Did you afterwards give her \$2,000 to go to Europe? A No, I did not; I arranged all the matters myself.

30 Q Do I understand that you assert that because of Mrs. Pfender's treatment of you back in 1914, your health was impaired in 1926? A I don't state that; I simply said that I was under constant strain in my domestic relations and it kept me constantly nervous and under an unusual strain.

Q Was that the fact when you lived in Ridgewood? A It was the fact all through my married life.

40

*Carl D. Pfender, cross.*

Q Mr. Dougherty came to your house in Glen Ridge before you left, didn't he? A He did.

Q Why did he come there?

Mr. Lum: Mr. Dougherty is here and is going on the witness stand, and you can go into every detail of this. I promise to have him back after recess. I simply make that as a suggestion to you, so if you wish you can avoid duplication.

The Court: Answer the question.

A He came at Mrs. Pfender's request.

Q Because you were going to leave? A Absolutely not.

Q Did you hear her telephone for him to come? A No, I didn't know that he was there until he appeared.

Q Weren't you present when she told Mr. Dougherty that you were going to leave her? A I don't recall that she told him that; I don't think I was; if she told him that, I wasn't present; I don't recall it.

Q Did you hear any conversation between her and Mr. Dougherty? A I heard no conversation until I was called in. I think they had a conversation out on the lawn, because they came in the house together.

Q And then did she talk with him in front of you? A Yes, she talked to him.

Q In your presence? A In the living room.

Q And didn't she tell him that you were going to leave her and that she wanted Mr. Dougherty to do something to stop you from going? A She may have told him that; I cannot recall.

Q What did she do immediately after talking with you and Mr. Dougherty? A I don't recall that she did anything.

40

*Carl D. Pfender, re-direct.*

Q Didn't she go upstairs and leave you talking with Mr. Dougherty? A Yes, I think she did, now that you recall it.

Q And didn't you then tell Mr. Dougherty that she was insane? A No; absolutely not.

Q Do you know of any conversation of Mr. Dougherty with her in your presence after that? A I don't think there were any conversations with me present after that; I don't recall any.

RECESS.

Q Did you ever sign a request to two physicians or any persons to have your wife committed for observation or for insanity? A I signed something that I was requested to sign; I don't know what it was.

Q You don't know what it was? A No, it was some paper that these doctors wanted me to sign.

Q That had to do with her commitment for insanity? A I don't know that it was for commitment.

Q Didn't you swear to it? A Swear to what?

Q To the paper you signed. A I don't recall that at all; I may have; I don't recall it.

30 *Re-direct examination* by Mr. Lum.

Q Had you been out all night with any woman at any time since you were married? A No, never in my whole life.

Q Have you ever been unfaithful to your marriage vows at any time? A Never.

Q Did you ever state to your wife that you had? A Never.

Q Did you inform her that you had not? A I did.

*Carl D. Pfender, re-cross.*

Q Has there ever been any intimacy whatever with this young lady who was encountered in the park on one occasion? A Never.

Q Have you ever seen her since or continued any intimacy? A No, sir.

Q One other incident that perhaps I should touch on. Do you recall picking up some nurse or servant one time in an automobile? A Yes.

Q About when was that? A It was probably about 1918, I should say, just after the war.

Q Where? A In Ridgewood, New Jersey.

Q And what, very briefly, was the incident?

A I was going down town one night on an errand and had to go to Paterson, and I saw this nurse who had been in the house taking care of Mrs. Pfender there, and I knew she lived in Paterson, and I asked her if she wanted to get in and go with me, and she said yes. She was a middle-aged woman, considerably older than I was so she got in and went down to Paterson with me, and when I came back I told Mrs. Pfender of it, and she said, "I don't see how you could do such a thing."

Q Did she speak of it or refer to it again; did that incident come up again? A I don't recall that it did after the thing was over.

30 *Re-cross examination* by Mr. Blankenhorn.

Q 1918, that was at the time you were living in Ridgewood? A Yes.

Q And you were doing a good deal of charitable work there at Camp Merritt? A I?

Q Yes. A I never did any charitable work in Camp Merritt.

Q Didn't you give the camp electric fans for the huts? A I did.

*William McKenney, direct.*

Mr. Lum: I object as not cross examination in any way.

The Court: That is not cross examination.

10 Q Your relations with Mrs. Pfender in Ridge-wood were very cordial, weren't they? A At times they were the same as they have been from the very beginning.

Q And your relations with her at that time were the same as they have been all through your married life? A They have been more or less unpleasant all through my married life.

20 Q That isn't the question. I say they were the same then as they have been all through your married life? A Materially the same until the end of the period.

Q Isn't it a fact that the quarrel in the taxi-cab arose because Mrs. Pfender thought you were having her kept in a hospital for observation as to her sanity? A I cannot see how it could be.

Q Didn't she say so? A I don't remember whether she said it or not.

30 Q Didn't she tell you that she didn't need two nurses just because she had a pain in her back? A She may have said that, I don't recall.

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WILLIAM McKENNEY, sworn for petitioner.

*Direct examination by Mr. Lum.*

40 Q You have been associated with Mr. Pfender in business for some years? A Sixteen years about.

*William McKenney, direct.*

Q Do you know Mrs. Pfender? A I don't know Mrs. Pfender very well.

Q You met her? A I have met her.

10 Q Will you tell us briefly during this period that you have known Mr. Pfender what you can say as to his character and temperament as a gentleman, and so forth? A I should say that Mr. Pfender was a very conservative type of man, an absolute gentleman in every way, very gentle and peaceable.

Q Is he a profane or violent man? A Absolutely not.

Q And briefly, did you observe whether in the spring and summer of 1926 he seemed under considerable strain or not? A Yes, he was under a decided strain.

20 Q How did it manifest itself to you? A He was very nervous at the office; when he would come from his home he was very upset in the morning; it would take him some time to get down to his normal manner.

Q Did it interfere with his work or not? A Seriously.

30 Q After October, 1926, did you notice any change in his work and appearance and demeanor? A Mr. Pfender has been a different man since then, I might say.

Q How has that been observable, briefly? A He is more his natural calm self, the way he was after he seemed to gain his composure before this time.

Q Has that or has that not been reflected in his work? A Very much so.

Q Do you recall in August, 1926, a conversation with Mrs. Pfender? A I do.

40 Q And do you recall whether she said anything about her husband's unfaithfulness in stay-

*William McKenney, cross.*

ing out all night? A She said that Mr. Pfender was—the trouble with Mr. Pfender was that he was a sport and that he was going around with women, and he had stayed out all night with one young woman from our office.

10 Q And had you ever in your sixteen years observed any tendency whatever toward a sporty life with him? A Quite the contrary.

Q And did you inform Mrs. Pfender of your confidence in him? A I told Mrs. Pfender that her remark would impress any of Mr. Pfender's friends as being ridiculous.

*Cross examination by Mr. Blankenhorn.*

20 Q When did you tell her that? A When I was talking with Mrs. Pfender on Fifth avenue.

Q Went there by appointment with her? A No, Mrs. Pfender called me up at the office from the cigar store on the corner of Fourteenth street and Fifth avenue, and asked me to meet her.

Q This was after they had been up to Westport that summer? A I presume so.

Q Don't you know? A I know they had been to Westport that summer; this was in August.

30 Q Didn't Mrs. Pfender tell you that her husband had confessed to her his infatuation for a young woman in the office? A No.

Q Would you say she didn't tell you that? A I am quite sure that she did not.

Q And didn't she ask you to see what you could do to break it off? A She asked me to do what I could for them, and I suggested a meeting between them.

40 Q For whom? A For Mrs. Pfender and Mr. Pfender.

*William McKenney, cross.*

Q And you suggested a meeting where? A At the Hotel Brevoort.

Q For what purpose? A For them to talk over their difficulties.

Q What did she say the difficulties were? A She said the difficulties were that Mr. Pfender was a man that was running around with women, and he wouldn't give her any money. 10

Q And she didn't mention the young woman in the office? A She mentioned the young woman in the office.

Q What did she say about her? A She said that Mr. Pfender had stayed out all night with her.

Q And didn't tell you that he had confessed to her in Westport? A Absolutely not.

Q Then did that conference take place? A I think it did. 20

Q Where? A At the Hotel Brevoort.

Q Wasn't the young lady to be there? A No, the young lady was not to be there. Mrs. Pfender wanted to come up to the office and see the young lady and proposed—she wanted the young lady discharged, and I told Mrs. Pfender that that was none of her business.

Q Did you attend the conference at the Brevoort? A I did. 30

Q Didn't Mrs. Pfender make a statement to you there that she wanted her husband to stop going around with that girl? A She made the statement that he had been out with her all night, yes.

Q Didn't she say that he had been going with her for years? A I don't recall that.

Q You never visited the Pfenders in any of their homes? A Yes, Mrs. McKenney called on Mr. and Mrs. Pfender one time. 40

*William McKenney, re-direct.*

Q And when? A It was previous to that; I don't just recall the date; we were going to a wedding in Montclair.

Q A year or two years ago? A I cannot say.

Q You noticed nothing wrong between them?  
A I did notice that the relationship was a little  
10 bit strained, and when we first arrived Mrs. Pfender opened the door and to relieve the situation, I suggested that we look at Mr. Pfender's garden; I had never seen his garden.

Q To relieve what situation? A The strained relationship I felt in the air.

Q You just felt it? A Yes, decidedly.

Q Nothing was said? A No.

Q And that is the only time you have visited them in their home? A Yes.

20 *Re-direct examination by Mr. Lum.*

Q I don't want details; you are familiar with the financial end of the business? A Yes.

Q And has there been a change for the better or worse this year? A Much for the worse.

Q And is the net result of the year likely to show a profit for the partners or a loss? A Probably a loss.

30 Q And it may be a substantial one? A I think so.

Q Mr. Pfender's drawing account a year is what, if you know? A It is a little over a thousand dollars a month.

Q \$12,500 being exactly it? A About; I don't know the exact figures.

Q And can anything beyond that at any time be taken without the consent of the other partners? A No, sir.

40 Q And his interest is nineteen per cent of ninety-two per cent? A Yes.

*Dr. George Pryor Dougherty, direct.*

Mr. Blankenhorn: I understand you are not going into the financial situation?

Mr. Lum: No; I wanted to give the Court—

The Court: It opens the door, if you insist on it.

10 Mr. Lum: If he wants to. My reason for this testimony was to give you a general picture of whether you were dealing with people of limited or large means. I will make a statement that it is not to be binding upon you until your further examination. We will then give you the fullest opportunity for any examination you desire.

Mr. Blankenhorn: I don't want to go into the capabilities at this time.

The Court: You may reserve it.

DR. GEORGE PRYOR DOUGHERTY, sworn for petitioner.

*Direct examination by Mr. Lum.*

30 Q Mr. Dougherty, what is your profession or calling? A Clergyman.

Q Where? A Christ Church, Bloomfield and Glen Ridge.

Q And do you know Mr. and Mrs. Pfender? A Very well, indeed.

Q Have you been friends of both of them for some years? A For seven years.

40 Q Will you tell us somewhat as to the character and disposition and nature of Mr. Pfender? A Mr. Pfender, I found him to be always

*Dr. George Pryor Dougherty, direct.*

a genteel type and exceedingly good natured, easy to be entreated.

Q Was he a man of generous or mean nature in disposition? A Very generous disposition.

10 Q What have you observed as to his brutality and profanity at any time on his part? A I have never seen the slightest evidence of either brutality or profanity.

Q What was his standing in the community in which he lived? A Very high standing, much respected by the people who knew him.

Q During the last few years, particularly 1926, what did you observe in reference to the relations in the Pfender home becoming more or less strained? A I noticed that they were becoming much more strained.

20 Q How was that observable? A Mrs. Pfender called me one evening—

Q About when? A The latter part of September, 1926.

30 Q Tell us what took place. A I, at her request, went to their residence on Ridgewood avenue, and Mrs. Pfender met me on the front lawn, and we stood there for quite a good while—I should say close to an hour, while she was telling me of Mr. Pfender's immorality and brutality—alleged immorality and brutality, and after she had talked to me with a considerable time in this strain, I said that if that was the type of man he was, I must talk to him about it, and I went thereupon into the house and spoke to Mr. Pfender. He seemed to be much dejected. I asked Mrs. Pfender if—we had probably one or two minutes' conversation of a confused sort, one person saying something and another person, without continuity, and I asked her if she would mind excusing us, as I wanted to say to Mr.

40

*Dr. George Pryor Dougherty, direct.*

Pfender things that might be embarrassing if said in front of a third party, and she thereupon left the room. I asked Mr. Pfender to take a walk with me, so that there would be no possibility of our being overheard while I talked to him. We took a walk and I told him—

10 Mr. Blankenhorn: I object to anything that you told him that his wife said.

The Court: I assume that he is going to say that he told him what his wife said.

The Witness: That is exactly it.

The Court: If that is your intention, you may proceed.

A (Continuing.) I told Mr. Pfender as far as I could, word for word, what Mrs. Pfender had told me, and had signified my intention of doing that in Mrs. Pfender's presence before we left the house, or before she left us in that conversation. I think it was well understood by both just what was taking place. At the conclusion of my telling Mr. Pfender what Mrs. Pfender had said, he seemed to be in a very, very greatly disturbed state of mind. I after that called on Mrs. Pfender a number of times in succession. If I transgress the technicalities of your rules, you will tell me. I had a very great desire to be the friend of both parties; I had a real affection, and still have, for both Mr. and Mrs. Pfender, and felt that possibly I might be of some use in quieting down what was evidently an intolerable disturbed situation. My conversation with Mrs. Pfender—I left her in a less violent attitude toward Mr. Pfender. In my conversation with Mr. Pfender I urged him to a tolerant attitude toward Mrs. Pfender, and my

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*Dr. George Pryor Dougherty, direct.*

intention was to get each one of them in a good frame of mind toward the other and see if there were not some possibility of a reconciliation. Mrs. Pfender was in a state of—I hesitate to use the word “hatred”—violent dislike of Mr. Pfender at that time. Shall I say what she said to me?

10 Q Please do so. A She said that he had been running around with some woman; said that she was an employee of his; wanted very much to have an interview arranged with this young woman. I said that I would speak to Mr. Pfender about that, and did speak to Mr. Pfender about that. He then told me what was testified to here, as to his having been out to dinner on a few occasions and taking this girl for an auto-  
20 mobile ride or two. I left Mrs. Pfender when there seemed to be no possibility of reconciliation. The situation seemed to have gone to an intolerable state. I urged Mrs. Pfender to consult the best lawyer that she could find and have Mr. Pfender do the same thing, and see if there couldn't be some kind of an amicable adjustment made between them; if they couldn't live together, to live apart, for Mrs. Pfender said that she would not live with him. Mr. Pfender had  
30 said that he couldn't live with her any more, and I urged each one of them to consult the best lawyer they could find, and see if there couldn't be some amicable and private adjustment made. Mr. Pfender agreed to that; Mrs. Pfender did not agree to that. She said on one occasion that she didn't want anything to do with Mr. Pfender and didn't want any of his money; on another occasion, that she thought he ought to pay, and pay well. She said he had always been  
40 a very good man, and she couldn't understand

*Dr. George Pryor Dougherty, direct.*

why he had changed so, and during one of these interviews, she told me of the incident of having stood over him with a revolver.

Q Tell us, please, just what she said about that. A She said on one occasion she had taken a revolver and stood—I have forgotten whether she said stood over him or near him, and had  
10 thought of killing him, but the thought of taking life was repugnant to her, and she had decided not to. She said “I want to show you something,” and I had an idea of what was coming, and my idea was correct, it was a Colt 32.

Q Have you it? A I have it not; you have it for me.

(At this point a package was handed to the witness by Mr. Lum.)

The Witness: That is the Colt 32.

Q Is this the gun? A That is the gun and package it was in.

Q Has it been out of your possession from that time until this until it was brought here?

A Yes.

Q When? A I didn't get it on that occasion; it was in her keeping, I suppose, for some time, and strange as it may seem, I cannot recall the exact circumstances under which this particular revolver came into my possession.

Q Did you get more than one revolver? A Yes, I have another one.

Q In connection with this familiar affair? A Yes, I have another one; it looks like a larger brother.

Q Can you remember where this one came from? A Yes, Dr. Beling gave it to me.

Q Did Dr. Beling tell you where he got it from? A Yes.

*Dr. George Pryor Dougherty, direct.*

Q Did he tell you where he got it from? A Yes.

Q And where had Dr. Beling been before he came to see you? A At the Pfender house.

Q Have these guns been in your possession ever since? A Yes.

10

Mr. Lum: I ask to have this Colt 32, the one in the box, marked.

Mr. Blankenhorn: I object to that as incompetent and immaterial and not binding on this defendant, any testimony as to how this came into his possession.

(Marked Exhibit C. 1.)

Q Is this the revolver that Mrs. Pfender showed to you? A Yes.

20

Mr. Blankenhorn: He said he couldn't recall how this came into his possession.

Q On the first occasion when you saw the revolver that I have offered in evidence, tell us all that took place. A If I knew what you were after, I would tell you. Mrs. Pfender brought this revolver in a package, in a box, tied up with this white tape, opened it and showed it to me. When she was coming into the room, I knowing that she was going for a revolver, had a more or less musing thought as to whether she was going to use it on me or not, and I took it, looked at it, broke it to see if it was loaded.

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Q Was it loaded? A No.

Q Go ahead. A There was a box of bullets.

Q Cartridges? A Cartridges in the package with the revolver. I looked at it and examined it and handed it back to her. She tied it

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*Dr. George Pryor Dougherty, direct.*

up in the package and held it in her hand, in her lap, during the rest of the conversation, and still had it when I bade her adieu.

The Court: You said that as introductory to this revolver being shown to you, Mrs. Pfender said, "Wait a minute, I have something I want to show to you." Did she tell you anything else about the revolver except what you have recited?

10

The Witness: She said that she had been tempted on a great many occasions to shoot Mr. Pfender, and it was in the midst of that conversation that she said, "Wait a minute, I have something to show you." Does that answer your question?

The Court: Yes.

20

Q Have you any recollection of when the revolver came back to you again, whether it came from the gardener or Mr. Pfender? A It came through the gardener.

Q Two or three days later or within a day or two later? A I cannot recall that; it was a very short time later.

Q How long after Mr. Pfender left the house, which was the 1st of October, 1926, did you come into possession of the large revolver here? A I imagine it was ten days.

30

Q The matter of Dr. Beling coming there, did you know of that? A Yes.

Q And Dr. Washington also? A Yes.

Q Was it for the purpose of an examination? A Yes.

Q Were you familiar with the attitude of Mr. Pfender at that time? A Yes.

40

*Dr. George Pryor Dougherty, direct.*

Q Was it a desire to railroad his wife to an insane asylum or to have her taken care of according to the very best possible way in which it could be done?

10 Mr. Blankenhorn: I object as improper and immaterial.

The Court: Objection sustained; it is not for this witness to characterize the attitude on a question of that kind. He may tell what was done and what was said indicating the attitude, and it is for the Court to determine what that attitude was.

20 Q Did you observe the effect of this general situation during the year 1926 upon Mr. Pfender's health? A Yes.

Q What was the effect upon his health, if anything? A Absolutely deleterious.

Q How was that observable? A He was thinner and very nervous.

Q Could you tell whether or not he was under apprehension? A I could; he certainly was.

30 Q And after the change came the 1st of October, did you then have any occasion to observe his general health and appearance? A Yes.

Q He lived there with you for some time? A Yes.

Q What did you observe as to that? A I observed a very definite and almost immediate improvement in his health.

Q How did that appear? A He seemed to gain in health and quieted down.

40 Q You were in touch with these two doctors, Dr. Washington and Dr. Beling? A Yes.

*Dr. George Pryor Dougherty, direct.*

Q Do you know of any men coming up to Mrs. Pfender's house at any time to take her away to an insane asylum? A No.

Q Did you ever hear directly or indirectly of any such thing? A No.

10 Q At all times during the examination and the question as to what course had best be adopted, you were in touch with both Mr. and Mrs. Pfender? A Yes.

Q Will you say as to whether or not Mrs. Pfender was of a jealous disposition? A Very, a very jealous disposition.

Q Was it a general or a specific and particular jealousy? A A general jealousy.

Q Will you tell us how it manifested itself as you observed it?

20 Mr. Blankenhorn: During what time?

Q During the last few months particularly. A The spring and summer of 1926 I understand you refer to.

Q Yes; I will come back to a few instances later. A She spoke in very bitter terms of Mr. Pfender's relation to an employee, a young woman employed in his office, spoke very violently.

30 Q Will you tell us of any specific charge she made against him? A I think I can give her exact words.

Q Please do so. A "Mr. Pfender's office is way back in the back part of the building; she is in there a great deal and no one can tell what goes on, and I have my suspicions."

Q Those were her words? A Those are as near as I can recall almost exactly her words.

40 Q Did she say anything about hotels? A I don't recall that.

*Dr. George Pryor Dougherty, direct.*

Q Go ahead, anything else you recall that she said about it. A She spoke of his riding with women up in the park, and told him she had had him watched.

Q Did you know of his riding in the park?

A Yes.

10 Q Did you inform Mrs. Pfender what you knew about that? A Yes.

Q What did you tell her? A I told her that he rode practically always to my knowledge either alone or with one or two male companions.

Q And did that seem to change her attitude?

A Not the slightest.

Q Did you attempt to reason with her as to the nature of Mr. Pfender and the fact that he was a good man? A Yes.

20 Q Were you able to reach her reason or change her attitude toward him in the slightest?

Mr. Blankenhorn: It is all subsequent.

Mr. Lum: This is all in the summer of 1926?

The Witness: I so understand it.

30 Q Will you tell us whether or not Mr. Pfender informed you as to how he arranged his bed at that time? A He did.

Q Will you tell us whether or not this jealousy extended towards anyone else than this one employee? Did you ever observe anything with reference to others, male or female? A Yes.

Q Briefly tell us what you observed. A That Mrs. Pfender told Mr. Pfender of the incident in the church of people making fun of him.

40 Q Had you ever observed that in the slightest? A No, not in the slightest; perfectly imaginary.

*Dr. George Pryor Dougherty, direct.*

Q What was the attitude of the church toward him? A Very highly respected. It was purely imaginary, and what started—if this is irrelevant, stop me—what started my rather amused idea of the jealousy was when my wife invited Mr. Pfender to take a ride in the park with her one day and he refused with so much embarrassment. 10

Q Were you up at Westport in any summer?

A Yes.

Q Do you recall any incidents up there in your home? A Very well, the summer that you have referred to; 1924, I think it was.

Q Tell us what you know about the occasion; what happened? A On about the fourth of July Mr. Pfender asked me concerning an outboard motor that he had for a small boat, and seemed to be in doubt as to how to work the thing, and I told him that I could show him, and one of us—I have forgotten which one—suggested that it might be a good thing if we asked Mrs. Pfender to go with us, as it would be the first ride in the boat, as there was some talk of it being a fishing boat, as he bought it with that idea. We asked her to go with us and she said she would rather not, but in the most gracious and genial way—I don't know whether this is relevant or not, but Mrs. Pfender had been most kind and generous and perfectly lovely to us, who were living near neighbors to them, and indeed we were their guests, for Mr. and Mrs. Pfender had given us the rent of the cottage for that summer, and I went with, I think, one of my young men's sons and Mr. Pfender, to try out the motor. The next morning Mr. Pfender, Mrs. Dougherty and myself went fishing early before breakfast—I imagine it was half-past four or 40

*Dr. George Pryor Dougherty, direct.*

quarter-of-five in the morning. When we came back—Mr. Pfender having told us that he must be back for an eight o'clock breakfast—I cleaned some of the fish that we caught and took one of them over to the back door, Mr. Pfender's back door, and Mr. Pfender was there and said  
 10 he didn't want it, and he said it in such fashion that I knew he was a very different type of person from what he had been for three-quarters of an hour before, evidently very much wrought up about something. That evening I noticed that there seemed to be nobody about the Pfender cottage and remarked that the place looked deserted. The next morning there was no one about, but there were papers—brown papers over  
 20 all the windows, making the house look like a place that had been boarded up or closed up for the season. I went over to the house and knocked on the door and got no response. I went to the back of the house and knocked at the door and there was no response, and it was that evening or the next evening that I saw the big collie dog, and so realized that there must be someone there, and finding that Mrs. Pfender was in the house alone, I, if it was permitted, could say what people told me, I could tell you  
 30 how I found that out.

Mr. Lum: No.

A (Continuing.) On finding that Mrs. Pfender was in the house alone, I sent Mr. Pfender a telegram—I didn't know whether he knew that the servants had gone or not; I felt very anxious that she should be alone in the house. I sent him a telegram stating that there appeared to be no servants and that Mrs. Pfender was alone.  
 40

*Dr. George Pryor Dougherty, direct.*

I thought that. In reply to that a telegram came and I supposed it was in reply to my telegram, but the telegram was addressed to Mr. Pfender's cousin, Adolph Pfender, and then I discovered that Mrs. Pfender was leaving for home, Glen Ridge, and Mr. Henckel gave me—stating  
 10 that he didn't know what to do with them, five or six 45-cartridges, and I took them and threw them in Lake Champlain, probably the safest place for them. Mrs. Pfender left for Glen Ridge, as Mr. Henckel said a little while ago, and Mr. Adolph Pfender, the cousin, sent the telegram that I wrote to Mr. Pfender, Mr. Carl Pfender, telling him that Mrs. Pfender had gone and that he had better try to meet her on the train, and I sent that telegram myself so  
 20 as to catch him on his train coming north and he could meet Mrs. Pfender at Saratoga going south. My only interest then was to help out both parties in what seemed to be a very terrible situation.

Q Did Mrs. Pfender come back again that summer? A He came back the next day.

Q I mean Mrs. Pfender. A She did not, so far as my knowledge goes, no.

Q One question I omitted to ask. When Mrs. Pfender showed you this revolver, did she tell  
 30 you whether or not she bought it, and if so, for what use? A She said she had bought it to shoot Mr. Pfender with.

Q Did she or did she not say anything to you at that time as to whether or not she thought she could stand it any longer? A She said she couldn't stand it any longer. Those are not her words, but that the situation had gotten to be utterly intolerable.  
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*Dr. George Pryor Dougherty, cross.*

Q Do you know of anything that Mr. Pfender could have done at the time that he did not do, either by word or action? A I do not.

*Cross examination by Mr. Blankenhorn.*

10 Q You don't know why he left Westport on that day, do you? A I certainly do, but not legally.

Q You don't know why he was upset after you came there with the fish, of your own knowledge? A Not of my own knowledge, no.

Q You are Mrs. Pfender's rector, are you not? A Yes.

Q And you went to the house solely because she sent for you? A Absolutely.

20 Q And that was the first time you knew of any difficulty between these parties? A No. That was not the first time I knew of any difficulty.

Q When was the first time? A Oh, I cannot be accurate as to it; probably two years, two and a half years before that.

Q And how did that manifest itself? A I received a very violent and insulting post card from Mrs. Pfender to one of the guilds in the church.

30 Q Have you the post card? A No, I tore it up.

Q Mrs. Pfender has contributed largely, has she not, to the work of the church? A Yes.

Q Financially? A Yes.

Q And for the past two years has been a very devout woman? A The past two years?

Q Yes. A I haven't seen her since the summer of 1926.

40 Q For the two years prior to that? A Oh, yes.

*Dr. George Pryor Dougherty, cross.*

Q She attended church regularly? A Yes, fairly so.

Q And to all outward appearances she was a good Christian woman? A Unquestionably.

Q You know that she has a son, don't you? A Yes.

Q You know that he served in the World War? A Only as I know lots of other things, from hearsay.

Q That he was on a submarine chaser? A From hearsay I know that.

Q And don't you know that this is his gun, referring to the larger revolver that has been offered in evidence? A No.

Q You made an affidavit in this case? A Yes, I think I did.

Q To be used on one of the preliminary motions? A I understand so.

Q You said in that affidavit, "Deponent further says that he observed various incidents in which the unreasonableness and unwise conduct of the said Lillian E. Pfender caused her husband extreme anguish of mind, and he observed the gradual undermining of health of the said Carl D. Pfender. Many incidents might be narrated at length as to all of this, but it culminated, so far as deponent was concerned, in September, 1926, at which time the said Lillian E. Pfender stated to deponent that her husband was in the habit of meeting women while he was out horseback riding in parks in the morning, that he had been unfaithful to her and that she intended to kill him, and she at that time showed deponent a revolver that she had for that purpose. Deponent took the revolver from her and still has it." That is not true, is it? A That is technically incorrect. I did not take that revolver at that time.

*Dr. George Pryor Dougherty, cross.*

Q You got that from Raphael, the gardener?

A Yes, that is correct.

Q Is this affidavit wrong in any other respect?

A No.

10 Q And this malign and sinister jealousy that you refer to, what did you mean by that? A I meant just what I have stated here. I have tried to boil down into the testimony of a few words the result of a number of days of very violent conversation.

Q And you thought that it was malign and sinister for this woman to be jealous of her husband, who had confessed to her an infatuation for a young woman?

20 Mr. Lum: I object to that; there is no evidence whatsoever of any such thing.

The Court: Objection overruled.

Q Do you consider it malign and sinister for Mrs. Pfender to be jealous of a young woman whom her husband told her he had been taking out to dinner on at least six different occasions?

A Yes, I do.

30 Q You think that a married woman in love with her husband should not object to that? A I certainly do not.

Q I show you Exhibit D. 6 for identification, which is a letter in the handwriting of Mr. Pfender, and ask you to read the sentence that has been underscored. A I read that.

Q Read it out loud. State whether having read that, it is now your opinion that Mr. Pfender was not profane. A I see nothing profane there; I don't know what it means.

40 Q Do you see anything improper in that? A I will read the sentence out loud; I don't know

*Dr. George Pryor Dougherty, cross.*

what it means. (Reading) "It is most unfortunate that we had that dirty little B Margaret," but I don't know what that means. I have no idea.

Q Have no idea? A None whatever.

10 Q When you went over there on this September morning, didn't Mrs. Pfender tell you that her husband was going to leave her? A It was not in the morning; it was at night.

Q September night, then. A To the best of my recollection, there was no hint at that time that Mr. Pfender was leaving.

Q Didn't she tell you that she wanted you to do something to stop him from going? A Not as far as I can recall, she did not.

Q You knew he was going? A I did not.

20 Q When did you first find that out? A It was several days after that. In fact, Mr. Pfender had apparently no intention of going at that time.

Q And she just wanted you to reason with him with respect to this young woman? A She did not want me to reason with him.

30 Q What was the purpose, then? A Apparently the purpose was to tell me of Mr. Pfender's brutality and infidelity, with the idea of arranging a meeting between Mrs. Pfender and this young woman. When I proposed that I see Mr. Pfender, Mrs. Pfender thought—

Q For what purpose, Mr. Dougherty? A To talk over this matter of the conversation with Mrs. Pfender I had just had.

Q And to try to break up the relations between this young woman and her husband? A There was no statement of any such thing.

40 Q You said that that was what it was for? A No, I didn't.

*Dr. George Pryor Dougherty, re-direct.*

Q You just thought that she wanted to go and talk to this young woman, is that right? A You cannot put words in my mouth, sir.

Q I am asking you. A Mrs. Pfender talked with me at great length, and after she had told me of her suspicions and Mr. Pfender's brutality, I said, "If that is the case, I must talk with him," 10 purposely not stating any reason why I was going to talk with him, for I did not believe Mrs. Pfender.

Q What did you understand that meeting between Mrs. Pfender and this young woman was to be had for? A I couldn't for the life of me see the faintest imaginable sense in it.

Q Mr. Pfender went to live with you? A At my invitation.

Q How long after the time when you were called to the house by Mrs. Pfender? A I cannot give the exact time, a matter of ten days or two weeks. It was after our consultation with an attorney and after a consultation with Dr. Beling and Dr. Washington.

Q You attended those consultations? A Some of them.

Q And you urged Mr. Pfender to leave his wife? A I did.

30 *Re-direct examination by Mr. Lum.*

Q In your judgment would it have been safe for him to have continued to live with her?

Objected to. Objection overruled.

Mr. Blankenhorn: He hasn't qualified as a physician.

The Court: He doesn't need to.

40 A No, it would not.

*Dr. George Pryor Dougherty, re-cross.*

*Re-cross examination by Mr. Blankenhorn.*

Q Why do you say that, Mr. Dougherty; why wouldn't it have been safe for him to stay there?

A For two reasons; the first being that he was so worried that his health was breaking; the second reason, that Mrs. Pfender was so wrought up at the time, that I was afraid she would shoot him with this revolver. 10

Q This revolver was not loaded and it was tied up in a box, wasn't it? A It was tied with a tape in the box, and there is a package of bullets alongside, in it.

Q But it wasn't loaded? A No.

Q Did you know that Mr. Pfender had broken down the door into her room? A He told me.

Q You still thought that he was afraid of her? A If my wife locked me out of the house, I would break down any door in it. 20

Q Will you answer the question? A I did.

Q You thought he was afraid of her? A No, not because he broke down the door.

Q You didn't think he was afraid she was going to shoot him? A Yes.

Q You did think that? A Yes.

Q At the time he broke down the door and went into her room? A I don't know that. 30

Q That would indicate to you fear of being shot, would it? A Possibly he wasn't afraid at that instant.

Q Did he tell you how many times he broke down the door? A He told me of two occasions, one when he had broken a panel out of the door when he was locked out, and once when he put his foot against the door. Those are the only two occasions he told me about.

Q He didn't tell you about any others? A No. 40

*Mrs. Ida Conklin, direct.*

Q You didn't go into the matter of the condition of Mr. Pfender's health with any physician, did you? A Mr. Pfender's health?

Q Yes. A No.

Q You didn't know whether he was suffering in any way from any cause other than his trouble with his wife that might lead to this decline in his health? A No, I didn't know that.

Q And didn't inquire? A No.

The Court: You offered the pistol?

Mr. Lum: Yes.

The Court: It may now be admitted, the first one, in the box. The second one is not in evidence, and hasn't been offered.

20

MRS. IDA CONKLIN, sworn for petitioner.

*Direct examination by Mr. Lum.*

Q Where do you live, Mrs. Conklin? A I live at 65 Union street, Montclair.

Q Do you know Mrs. Pfender and Mr. Pfender? A Yes.

Q How did you come to know them? A Well, going there as a housekeeper.

Q When were you the housekeeper? A I went there the twenty-second of June, 1926.

Q That was at the Ridgewood avenue house? A Yes.

Q And while you were there did Mrs. Pfender have any talks with you about her husband? A Yes, a good many.

Q You were there from June, 1926, until what time? A December the twelfth, I think.

*Mrs. Ida Conklin, direct.*

Q 1926? A I think—not long before Christmas.

Q In October did Mr. Pfender live there or leave? A I think it was about that time.

Q How long did Mrs. Pfender stay there after Mr. Pfender left? A I should think about a week or ten days; I have no record of it and of course I cannot tell a story.

Q After Mrs. Pfender went did you continue to stay in the house? A Yes, I stayed there up until in December.

Q And then what happened; Mrs. Pfender came back? A Yes.

Q And—? A Turned me out.

Q During this time that you were there between June and October, what, if anything, did Mrs. Pfender say to you about poison? A She said that she thought that Mr. Pfender was trying to poison her, as he had had different bottles of things, and that he would get a bottle and then he would put part of it in another bottle and fix it up for her and want her to take it, instead of taking out of the whole bottle.

Q What did you say when she told you that Mr. Pfender was trying to poison her? A I always tried to pacify her and talk to her just as nice as I could, because I couldn't believe it.

Q What, if anything, did she say about Mr. Pfender having tried to drown her? A She wouldn't go out on the lake with him, because she thought he was going to drown her up at Westport.

Q Did she say that to you on more than one occasion? A Oh, yes.

Q What did she say to you about his state of mind? A She thought he was crazy.

Q Did she tell you that more than once? A Yes.

*Mrs. Ida Conklin, direct.*

Q Will you tell us whether or not she said anything to you about other women? A Yes, she told me that he was going with other women, and that he had one that he had been going with, that he had been giving her \$2,500 a month for two years and four months, and that she had proof of it. 10

Q What else did she say to you as to where he had taken this woman? A She told me he was taking her to hotels and places and told me where, but I kept no account of those things; I cannot remember, but in New York and different places.

Q You cannot remember the names of the hotels? A No.

Q Can you remember what she said to you about these hotels? Give us her words, as to why he went there. A Well, he went there with a girl and stayed with her that night. 20

Q Did she say that to you on more than one occasion? A Yes, a great many times.

Q Will you tell us whether or not she referred to any other law case of prominence that was in the papers? A She said that several times, that this would end in the Hall-Mills case.

Q Will you tell us whether or not she spoke of a revolver? A Of course, I saw the revolvers, and I saw one she gave Raphael. 30

Q Do you recognize this— (Witness shown revolver.) Don't hesitate to say so, if you don't recognize this—as the revolver which you saw at the house (C. 1)? A The small one is the one she gave Raphael.

Q Do you know when she gave it to Raphael? A I should think it was perhaps two weeks after she showed it to Mr. Dougherty, because I will tell you the way I remember; she tried to 40

*Mrs. Ida Conklin, direct.*

find out by me and to tell Raphael when she gave it to him, and I said that I couldn't remember the date, but it was when some men were cleaning house and I thought they were cleaning the big dining-room the day that Mr. Dougherty was there. I knew the day Mr. Dougherty was there, and they were in the reception room the day that she showed Mr. Dougherty that new revolver. I took the revolver when it came from New York, or wherever it came from, I took it. 10

Q To whom was it addressed when it came? A To Mrs. Pfender.

Q What did you do with it? A I gave it to her, of course.

Q About when was that? A I cannot tell.

Q A few months after you came? A Oh, yes. I cannot remember; of course, they went up to Westport for a while after I went there. 20

Q When reference to the time that Mr. Pfender left the house, about how long after that, as near as you can fix it, was it that Mrs. Pfender gave this revolver, C. 1, to Raphael, the gardener? A I can't say just as to the—

Q A day or a week? A It was more than a day; three or four at least.

Q This large revolver, do you remember seeing that? A Just once. 30

Q Where did you see it then? A I think that she brought it downstairs, and I am not certain whether it was upstairs in the hall or down in the hall.

Q But it was in one of the halls, upstairs or downstairs? A Yes.

Q And did she ever refer to this revolver to you? A She said that one that she had, and I think that is one, the large one was Will's.

Q That is, her son's? A Yes. 40

*Mrs. Ida Conklin, direct.*

Mr. Lum: I ask to have this marked for identification as Will's, the son's.

(Marked Exhibit C. 2 for identification.)

Q Do you remember whether you had a friend who suddenly died? A Yes, sir.

10 Q About when was that? A I cannot remember the date. Mr. Wiley, up on Albany Road, Montclair.

Q Was it in the summer of 1926? A Yes. I can get the date, but I cannot just remember.

Q Did you speak of the incident to Mrs. Pfender, the death of your friend? A I told Mrs. Pfender about it; I wanted to go up there; we had been friends for years.

20 Q What, if anything, did she say to you when you told her of the death of this friend? A She said she wished to God that it had been Mr. Pfender.

Q And at that time did she say anything else to you about cars or automobiles? A She told me that, of course, several times.

Q What? A That she prayed to God that Mr. Pfender would be killed by an automobile or a train.

30 Q How did Mr. Pfender act in the house; was he violent or otherwise? A I never saw a lovelier man in his home than Mr. Pfender.

Q Was that so at all times? A All times.

Q How about his abusing his wife and using profanity towards her? A Never, not in my hearing or presence.

Q When you were there in December, Mrs. Pfender, who had been away from the middle of October, came back, you say? A Yes.

40 Q What happened when she came back? A I had been in the hall to phone and she came

*Mrs. Ida Conklin, direct.*

down the stairs, and she hadn't come out to the kitchen to see me, which she used to do, and I said, "How do you do, Mrs. Pfender?" She followed me right through the little hall and took both hands and just shoved me right into the kitchen. She said, "You dirty liar, don't you speak to me; I don't want anything to do with you. If it hadn't been for your black lies, I would never have left my home." 10

Q Did you know what she referred to at all?

A No, sir; how could I?

Q Had you up to that time told Mrs. Pfender any of those things that she had told you?

A I may—

Mr. Blankenhorn: I object to that. 20

Q Did she know of that? A Not that I know of. I don't know how she could; she was never home; I had never seen her nor heard from her.

Q Up to this time had you had any trouble with Mrs. Pfender? A Never.

Q Did you know of any reason whatsoever for her treatment of you when she came back?

A No, sir. 30

Q You did leave the next day? A I left the next night.

Q And your clothes were sent out to the garage and brought to you later? A Yes, she came out and she demanded all the keys of me and claimed that I had been going out and in the front door and doing things I shouldn't; I said I hadn't. I gave her all the keys, except to my door, and that I didn't. It was in my bag in my clothes press up on the third floor. 40

*Mrs. Ida Conklin, cross.*

Q You did give it to her later? A She went up there and got my bag and went through my things and found the key and took it.

Q And you left that night? A I left that night.

Q Have you ever had any contact with her again? A Never.

Q Or with Mr. Pfender until you met him here? A No, sir.

*Cross examination by Mr. Blankenhorn.*

Q When was it that she called you a liar? A The day that I left there.

Q That was in December, 1926? A Yes.

Q She came there with a lawyer, didn't she?

A There was a gentleman and a lawyer with her.

Q Do you know who they were? A I do not.

Q Didn't she ask you where her husband was? A He did; she didn't.

Q What did you say? A The lawyer came right out in the kitchen, or came in the solarium and came around, and he came in the kitchen and he asked me if I knew where Mr. Pfender was, and I said I did not, and I did not know.

Q You did know? A No, to this day I don't know.

Q Didn't you know he was living with Mr. Dougherty? A No.

Q Didn't you have Mr. Dougherty's telephone number so that you could get him in case Mrs. Pfender came home? A Nobody ever told me that, but in case I wanted to say anything to Mr. Pfender about the house or what was done, I should call Mr. Dougherty, and Mr. Dougherty

would inform him; that was all.

*Mrs. Ida Conklin, cross.*

Q Didn't Mrs. Pfender ask you where she could get in touch with her husband? A No, sir.

Q Didn't the lawyer ask you? A The lawyer asked me. He didn't ask me where I could get in touch with him; he asked me where Mr. Pfender was, I said, "I don't know." He said, "Do you know where I could find him?" I said, "I do not," neither I did.

Q Look at this little white slip of paper; that is your handwriting, isn't it? A Yes.

Q And isn't that Mr. Dougherty's telephone number? A Yes.

Q And didn't you have that in the kitchen when Mrs. Pfender asked you, or rather when the lawyer asked you? A I had Mr. Dougherty's address.

Q And you didn't tell Mrs. Pfender that she could get in touch with Mr. Pfender by calling Mr. Dougherty? A I didn't have to tell that man.

Q And you didn't tell him when he asked you? A It wasn't any of my business.

Q But he asked you to tell him? A He did.

Q And you didn't tell him? A No, sir, I didn't.

The Court: Let us have no misunderstanding. She said he did not ask her where or how he could get in touch with Mr. Pfender. He asked her where Mr. Pfender was.

Q Didn't the lawyer ask you where he could get in touch with Mr. Pfender? A No, sir, he did not.

Q But notwithstanding the fact that he asked you where Mr. Pfender was, you did not tell

*Mrs. Ida Conklin, cross.*

him that he could get in touch with him by calling Mr. Dougherty, did you? A I didn't.

Q Although Mr. Pfender had given you instructions that he could be reached through Mr. Dougherty? A If I had any business with him, but that was none of my business.

10 Q This was none of your business? A No, sir.

Q Look at this letter, Mrs. Conklin, is that your handwriting? A Yes.

Q Did you send that letter to Mrs. Pfender? A I probably did; I wrote her when she was up at Westport.

Q Exhibit D. 42. A There isn't anything in that; just a loving letter.

Q And a respectful one? A Yes, Mrs. Pfender and I were the best of friends.

Q You warned her, in fact, the night she left the house, that they were going to get her, didn't you? A Well, I didn't know.

Q Didn't you tell her not to let the men in, that they were going to put her away? A No, I didn't tell her not to let any men in.

Q Did you tell her they were going to put her away?

30 Objected to. Objection sustained.

A No.

Q What did you tell her? A When.

Q That night, the night of October 1st? A What night was that, October 1st?

Q Do you remember the night that something happened, as a result of which Mrs. Pfender left for Atlantic City the next day? A When some people came there in the evening?

40 Q That is right. A Yes.

*Mrs. Ida Conklin, cross.*

Q What did you tell her? A I said—she had been denying this, and she was afraid that they were coming, and I said, maybe that was who was coming.

Q And she was in great fear, wasn't she? A Yes.

Q And she ran upstairs? A She told me to go upstairs; she told me to put out every light in the house and go upstairs. 10

Q So that they would think there was no one there? A Yes.

Q Did you go up? A I went upstairs, yes, and got ready to leave.

Q To leave? A Yes.

Q You were going to leave? A I was going to leave.

Q Why were you going to leave? A I didn't want to stay under the circumstances. 20

Q Under what circumstances? A Well, all the talk that she talked to me all the time.

Q There was a great deal of trouble between her and her husband? A I didn't get very much of it.

Q Mrs. Conklin, you knew, didn't you, that the door had been broken down of her bedroom? A I don't know anything about it, only what she told me. 30

Q But you saw the evidence of it there, didn't you? A There was never anything of that kind happened while I was living there.

Q You were there between June and December, 1926? A From the 22nd of June until December, but I don't know—if anything of that kind was done when I was there, I didn't know it.

Q Didn't you see Raphael mending the door?

A I saw Raphael one time with some little 40

*Mrs. Ida Conklin, cross.*

nails fixing the lock and little molding up and down the side.

Q The molding on the door? A Yes. He was putting some little nails in it.

10 Q Didn't Mrs. Pfender tell you that he had broken down the door? A She told me he had lots of times, but I didn't know it was so.

Q When did she tell you? A She told me different times, but as I say, I didn't—I that is a fact, I didn't know that anything like that happened, while I was there.

Q You heard quarrels between Mr. Pfender and Mrs. Pfender? A Very little.

Q But you heard them? A I heard some.

20 Q And Mr. Pfender got greatly excited, didn't he? A Indeed, I never heard Mr. Pfender say one word in my life, only that I heard him one night trying to get her to unlock the door so he could go through to his bedroom. "And he said if she didn't open the door, he would knock it down." A Never.

Q What did he say? A He didn't say anything else, but just in the kindest tones; I heard him say one night, when they were having words in the hall about Will, "This is pretty late in the day for you to be taking your mother's part."

30 Q Will did take his mother's part? A That is the only thing that I ever heard said.

Q And Mr. Pfender took exception to Will's taking his mother's part? A I don't know; that is all I heard. But that is the most I ever heard Mr. Pfender ever say; I never heard any conversation to speak of between Mr. and Mrs. Pfender.

40 Q Then what were the circumstances that made you want to leave the house? A It was her talking so much to me about Mr. Pfender

*Mrs. Ida Conklin, cross.*

and those things continually, I got very tired of the inharmony.

Q Between them? A Of her talking to me all the time when he wasn't there; she never said anything to me when he was there.

Q When he was there, everything was lovely? A Yes. 10

Q They went out in the garden together and played croquet? A I never saw that.

Q Didn't you know that they did that during that summer? A No, they never did.

Q Did you know Mrs. Price? A There was one lady came in there one time to call.

Q She lives next door? A I think so; that is all I ever saw.

Q Were you there when she came into the house? A I went to the door. 20

Q Was Mr. Pfender there? A I don't think so. It was in the middle of the day, because I had to keep lunch for a long time for Mrs. Pfender was so long.

Q You knew, didn't you, that some papers had been signed with respect to Mrs. Pfender's sanity? A I don't know that I knew of any papers.

Q What did you know about that? A I knew that those physicians were coming there, and had been there once or twice, Dr. Beling and another physician, and of course, Mr. Pfender never said anything, but she told me sometime that they were examining Mr. Pfender. 30

Q You were trying to help her to keep this quiet that you spoke of in October? A No, I was trying to help her.

Q She told you to turn out the lights so no one would know you were there? A Yes, sure; I always did anything she told me to. 40

*Mrs. Ida Conklin, cross.*

Q You had told her that the men were coming? A I said possibly that is why, she said that they wanted her to go to some private rest home and see if she couldn't be benefited, and I said perhaps that they were coming then.

Q Had you talked to Mr. Pfender about that?

10 A No, sir, Mr. Pfender never spoke to me of any of this business.

Q Did you see who it was that came? A No, I did not. I was on the third floor, up to my room.

Q Getting ready to go? A Yes.

Q And Mrs. Pfender was getting ready to go, was she? A I couldn't say; I wasn't there.

Q You know she had her bag packed? A Yes, I know she was doing that.

20 Q You knew that she had a rope ready to go down from the roof? A No.

Q You didn't know that? A No.

Q Is there a fire escape on the house? A No, I never saw any.

Q Do you know of times when Mr. Pfender occupied some room other than Mrs. Pfender's room, the sleeping porch? A Mr. Pfender, I guess, always slept out on the sleeping porch until a short time before he went away.

30 Q How long was that? A I cannot just say.

Q Two or three days? A Several days; I cannot say how many, because I cannot remember, and kept no record of it.

Q Mrs. Pfender complained of the girl in Mr. Pfender's office, is that right? A Yes, I think she thought she was in the office.

Q And she told you that Mr. Pfender had told her about her, didn't she? A No.

Q She didn't tell you that? A No.

40

Mr. Lum: We rest.

*David Berner, direct.*

DAVID BERNER, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

Q Are you a practising physician? A Yes.

Q Practising where? A Atlantic City.

Q Will you state your general qualifications? 10

A I do general practice, connected with the—physician to the Atlantic County Asylum for probably twelve or fifteen years, and have been doing mental examinations for over twenty years.

Q Do you know Mrs. Pfender? A I met her once.

Q Did you see her in October, 1926? A No.

Q When did you see her? A November 26, 1926.

Q Where did you see her? A In my office. 20

Q What did you do? A She was sent there by one of our Atlantic City attorneys, Mr. Hedges, for me to make a mental examination of her, which I did, and made my report to him.

Q What did you find? A I reported to him that in my judgment she was not—

Mr. Lum: I object; I don't see the importance of this; there is no pleading in this case that she is insane.

The Court: I was wondering what the purpose was. 30

Mr. Blankenhorn: If there is no justification for a man trying to commit his wife for insanity, it seems to me that that is pretty close to extreme cruelty, and that she was justified in being in the condition of mind that she was in.

The Court: If you will put it on that ground I will accept it; that is a sword which may cut both ways. 40

*David Berner, direct.*

Mr. Blankenhorn: I realize that.

The Court: I will receive it. If she is perfectly sane, then she is perfectly responsible for everything she has done, and certainly no man can be expected to live with a woman who has threatened to shoot him all the time. I don't say that she is doing that, but I do say that the evidence as it stands now would indicate a very excited frame of mind, to say the least. If she is sane, she is responsible for it.

Mr. Blankenhorn: I appreciate that.

The Court: That is the reason I say it is a two-edged sword.

Mr. Blankenhorn: It is a fact that two physicians have certified that, and the petitioner has requested her confinement.

The Court: That may be, but there is no proof here of that fact, and the petitioner has not offered that.

Mr. Blankenhorn: I withdraw the witness.

30

40

*Dr. Christopher C. Beling, direct.*

SECOND DAY.

Continuation of testimony taken in the above-entitled cause before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, December 21, 1927, at 10 A. M.

10

Appearances:

Mr. Ralph E. Lum for the petitioner.

Mr. Merritt Lane, by Mr. D. Eugene Blankenhorn, for defendant.

DR. CHRISTOPHER C. BELING, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

20

Q Dr. Beling, you are a physician practicing in the County of Essex?

Mr. Lum: I admit Dr. Beling's qualifications.

Q Do you know Mrs. Pfender? A Yes.

Q Have you brought with you a certificate or a statemnt or paper of any sort calling for the commitment of Mrs. Pfender to the New Jersey State Hospital at Greystone Park? A I have not.

30

Q Did you make an examination of Mrs. Pfender? A I did.

Q Will you state when? A I saw Mrs. Pfender on October 1, 1926, and Ooctober 5th, I believe. I saw her on two occasions.

Q At whose request? A At the request of Mr. Pfender and Mr. Lum.

Q For what purpose? A To make an examination of her.

40

*Dr. Christopher C. Beling, direct.*

Q Examination as to what? A I was told that she was very nervous, intensely emotional; that she was jealous, that she had been armed with a revolver, and that her mental condition was in question.

10 The Court: You were asked to make a mental examination?

The Witness: Yes.

Q And did you request Mr. Pfender to sign any paper? A I did not.

Q Do you know that he did sign— A I do not.

Q —a paper? A I do not.

Q I show you a blank printed form. A I am  
20 familiar with these forms.

Mr. Blankenhorn: I ask to have it marked for identification.

The Witness: I only made about 5,000 of them.

The Court: The Court is somewhat familiar with them also, having been county justice for a good many years.

(Marked Exhibit D. 1 for identification,  
30 December 21, 1927.)

Q There is a blank form of application in this for some person interested in the patient to sign, is there not? A Yes.

Q And that is on page what? A Page 1.

Q It concludes on page 2? A Yes.

Q Did Mr. Pfender sign such an application?

A No, sir, not to my knowledge.

Q I call your attention to his testimony, in  
40 which Mr. Pfender testified that he had signed

*Dr. Christopher C. Beling, direct.*

some paper that he had been requested to sign, or words to that effect; did you see that paper?

A I didn't see any paper that he signed. He didn't sign it in my presence, as far as my recollection of it goes. If he signed a paper, I don't know that he signed a paper; I didn't see him sign a paper, and I have no recollection of his signing a paper in my office. 10

The Court: Mr. Blankenhorn, my recollection of that testimony is that he in the first place said that he did not sign any application, and then he said he signed some paper, but he didn't know what it was, but he wouldn't say that it was an application for commitment.

Mr. Blankenhorn: I think his words are, "I signed some paper that they asked me to sign; I don't know what it was." 20

The Court: It is very obvious this gentleman doesn't know anything about it.

Q Who, if anybody, made an examination of Mrs. Pfender with you at the time you made the examination? A Dr. Walter S. Washington.

Q And do you know whether he signed any certificate such as appears in this Exhibit D. 1  
30 for identification today? A No, sir.

The Court: You don't know whether he did or not?

The Witness: I don't know whether he did or did not.

Q Well, was it your purpose to sign such a certificate and have Mrs. Pfender committed?

A It wasn't my purpose, but we had been considering that question. 40

*Dr. Christopher C. Beling, direct.*

Q Who? A Dr. Washington and myself; we had spoken about it and spoken to Mr. Lum about it; we even might have spoken to Mr. Pfender about it.

Q Anyone else? A Not that I know of.

10 Q Did you go to the house of Mrs. Pfender on the evening of October 1, 1926? A I did.

Q Who was with you? Dr. Washington and Reverend Dougherty? A Yes, I think the three of us went there that night, and we went there because I had previously arranged with Mrs. Pfender to try to bring about a reconciliation between Mrs. Pfender and Mr. Pfender, and try to smooth out her difficulties, and when we went there we found the door locked and the place dark, and I believe that, not being allowed admission, we went away. That is my recollection of it.

20

Q Why did Dr. Washington go along? A That is my recollection; I wouldn't be sure that Dr. Washington was there, but that is my recollection, because Dr. Washington was with me. I have so many cases that I cannot recall this—I must be frank about it—but I do recall the incident of going there, and also seeing Mrs. Pfender the next day, and she apologized to me for it; she said she was sorry, but she was advised by somebody not to allow anybody in, because she might be railroaded.

30

Q Did she say who that person was? A No; that is all she said to me, that she might be railroaded, and she talked a great deal; I cannot recall all that she said, but I can recall some of the things, and I have a record of some of the things she said, because I took them down. That I can testify to very clearly.

40

*Dr. Christopher C. Beling, cross.*

Q Why did you take them down? A Because that is my usual custom to make notes on cases. I made notes on every case.

The Court: What is it you are trying to show, that this physician made an examination for the purpose of committing Mrs. Pfender to the State Hospital, if her condition warranted? 10

Mr. Blankenhorn: Yes, sir, and that he signed such a paper.

The Court: I don't know what other construction you could place on an examination of this kind. If he went there to make a mental examination, obviously, that was the purpose of it.

20

*Cross examination by Mr. Lum.*

Q Did you or did you not advise Mr. Pfender as to whether it would be safe for him to continue to live with his wife? A I told him not to go in there, because I was afraid that she might do some harm.

Q Why did you have that feeling? A Because she had some revolvers.

Q How did you know? A Because, first of all, she denied that she had a revolver, that she had given it to the gardener, and then subsequently she gave me the revolver, and I turned the revolver over— 30

Q To whom? A I think—

Q To Reverend Dougherty? A Yes. When she had told me that she hadn't had the revolver, and then that she produced a revolver, then I was very much afraid that she might do some harm, and she had notions that her husband was not treating her right. 40

*Dr. Christopher C. Beling, re-direct.*

Q When Mr. Pfender took this matter up with you, was his attitude one of bitterness and hostility, or of consideration for his wife? A I think he tried to do the best he could, as far as I know.

10 Q Did you advise her with reference to a sanitarium and a rest? A I certainly did.

Q What did you advise her? A I asked her to go to Dr. Prout's Sanitarium, in Summit. I tried my very best to try to induce her to take a rest somewhere, to go away, that she would quiet herself and get her nerves in shape. She was very much upset.

20 Q Was the effort of her husband to railroad her to an insane asylum, or have her receive the best sanitation and consideration possible to the end that her health might be restored? A I cannot—

Mr. Blankenhorn: I object.

The Court: Sustained; it is too leading.

Q What was the statement of the husband with reference to railroading her, if any? A I don't know; as far as I know, he didn't reveal any such thing to me. I know that he wanted the best done for his wife that could be done.

30 Q Did he tell you that? A Yes.

*Re-direct examination by Mr. Blankenhorn.*

Q Did he tell you that he had confessed to her that he had taken a young woman out to dinner while she was at Westport, and had taken the young woman driving on five or six occasions?

A He told me something like that. He told me that he had told his wife that he had taken 40 somebody out, simply to satisfy her, because she

*Dr. Christopher C. Beling, re-direct.*

was after him all the time, and he thought that that perhaps might satisfy her, and he also told me that he recognized how foolish she had been.

Q Did he tell you that that was the truth, and that he had in fact taken the young woman out? A He did go out with some woman, I think if I recollect rightly, but I don't remember the circumstances, but he said that he had taken someone out to dinner once, or something like that. 10

Q And didn't she tell you that he had confessed that to her at Westport? A She told me that and a great many other things.

Q Didn't she say that she couldn't understand how that was, that he could do such a thing, after writing such loving letters to her? A Yes, I believe she said something along those lines. She was full of complaints about her husband. 20

Q And didn't she try to get her husband to stop going with the young woman? A She had these ideas that her husband—she was obsessed about her husband.

Q Didn't she ask you to try to get him to stop? A Yes, she thought that she loved her husband and that she would be glad to have him give up all these things. 30

Q And did her husband, in your presence, promise her that he would stop? A No, sir.

Q Did you advise him to? A I tried to find out from him and all I found out was that incident; he said that he had tried always to do the best he could for her, but that she was unreasonable.

Q But he never promised in your presence that he wouldn't go with that woman any more? A No, I didn't have the opportunity that night; 40

*Harold Simandl, direct.*

we were going there to bring about a reconciliation.

Q Was Mr. Pfender with you that night?

A Yes, I took Mr. Pfender with me.

Q Outside? A Outside, Mr. Pfender and Dr. Dougherty and I think Dr. Washington.

10

HAROLD SIMANDL, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

Q Mr. Simandl, are you a counsellor-at-law of this State? A I am.

Q Do you know Mrs. Pfender? A I do.

Q Do you know Mr. Carl Pfender? A No, I do not.

20

Q Did you represent Mrs. Pfender at any time? A I did, I believe in November and December, 1926; I think that is about the time; I don't exactly know how long, but somewhere around November, 1926.

Q I show you Exhibit D. 1 for identification, today, and ask you whether you at any time saw such a paper signed by any physician for the commitment of Mrs. Pfender to the State Hospital at Greystone Park? A I wouldn't want to say that I saw a commitment to the State Hospital at Greystone Park; I saw what purported to be a commitment to some institution; I didn't know just exactly what institution, because I didn't get a full opportunity to see what was written entirely inside of the document. The circumstances of what happened I can tell you.

30

Q Do you know by whom it was signed? A One of the persons who signed that document was Dr. Washington.

40

*Harold Simandl, direct.*

Q Can you state what the circumstances were, as near as you remember? A I didn't get an opportunity to fully read it; I got what you might call a flash of the paper, that is all. The most opportunity that I had was to see that it was in reference to Mrs. Pfender and it was signed by Dr. Washington; that is all I saw of the paper.

10

Q Will you state the circumstances under which you saw it? A Mr. Lum represented Mr. Pfender and he invited me to his office to discuss various features of the case. Mr. Lum was very sincerely impressed with what he thought was his side of the situation. In order to impress me—I am not giving you the conversation, because I don't know whether it is relevant or not—in order to impress me, he was in a little office in his suite—his own room, I believe it is, in the suite in the Firemen's Building, and there was a little iron safe in the corner, and he went to this safe, and he picked out this paper, which I recognized to be similar to the papers that are generally used in the Juvenile Court for a commitment under the 1918 act, commitment of an insane person, and on the front of it was Lillian Pfender, and inside was the name of Dr. Washington and another doctor, whose signatures I could not recognize, and Mr. Lum said at that time—he said—I did observe this, too; I observed that ten days had elapsed from the making of the paper, and the date that he showed it to me. I said, "You will have to get another examination in any event," and he said, "Why, if we wanted to use this paper, we could have," and then we went on along the same conversation with respect to the property, and so forth, that we were discussing

20

30

40

*Harold Simandl, cross.*

at the time, but there was a commitment there under what I term the 1918 act.

Q Did you say anything about that to Mrs. Pfender? A Yes.

Q What and when? A I had a conference at our office and I suggested that she be examined.

Q For what? A Determine whether she was or was not mentally balanced. And I brought Dr. Dowd to my office to examine her, and he examined her in my presence, and I wrote Mr. Lum a letter, a copy of which I have here, in which I stated, I believe, that I had had her examined. Yes, on November 19, 1926, I wrote a letter to Mr. Lum, and in that letter I stated, "I have had Mrs. Pfender examined and have been assured that the woman is absolutely sane."

Q Did you tell her of this commitment having been signed? A I did, yes.

*Cross examination by Mr. Lum.*

Q Do you recall that the discussion was with reference to the fact that Mrs. Pfender was the joint owner of the property at Glen Ridge and in New York State? A That was part of the discussion, yes.

Q And the question as to the advisability of establishing a trust fund, rather than her having funds unlimitedly in her hands? A That was one of the things that were discussed, too, Mr. Lum.

Q I told you that certain doctors had considered that her case required very close watching, at one time? A You told me that a doctor in New York, as well as some doctors here, had come to that determination, yes, sir.

*Dr. Harold J. Harris, direct.*

Q And considered that it would be very unwise for her husband to attempt to live with her?

A I believe you said that, yes.

Q I told you about the revolvers? A Yes, you did; you told me that, yes, sir.

10

DR. HAROLD J. HARRIS, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

Q Dr. Harris, are you a physician? A I am.

Q Practising where? A In Westport, New York.

Q How long have you been practising? A About six and one-half years.

Q Where were you graduated? A In Albany, New York.

Q State generally your qualifications. A Simply that I have my degree of M. D. and my usual qualifications.

Q Graduate of what college? A Albany College.

Q Licensed to practise in New York State? A I am.

Q Do you know Mrs. Pfender? A I do.

Q Do you know Mr. Pfender? A I do.

Q Do you know a Mr. Ross? A I am quite certain I have met a Mr. Ross.

Q Do you see him in the court room? A No, I wouldn't recognize him.

Q He is the gentleman on the back seat. A Yes, I think I do recognize Mr. Ross.

Q Did you attend Mrs. Pfender in August, 1926? A I did.

Q And in July, 1926? A Yes.

40

*Dr. Harold J. Harris, direct.*

Q What did you treat her for in July, if anything? A A fractured rib in July.

Q When again did you see her? A In August.

Q Have you a record of your visit there? A Yes, I have.

10 Q Was that made at the time of the visit?

A Yes, that was made at the time.

Q When did you visit her in August? A On the eighth of August, 1926.

Q Do you recall what day of the week it was?

A It was Sunday; that I have just checked up, to be sure; I just put the date down.

Q What was her condition? A When I came, her condition wasn't clear to me; she was in a state, I should say, semi-conscious, but it was apparent from reflexes that were present that she was not completely unconscious, and after several attempts to elicit answers to my questions, I succeeded and got a story which made me realize that the condition was a nervous attack.

Q While you were examining her, was Mr. Pfender there? A As I recall it, Mr. Pfender was in and out of the room; he was in the building, yes.

30 Q And was Mr. Ross also there? A I think Mr. Ross came into the room; that I wouldn't say for certain. I know he was in the building, too; I think in the next room.

Q Did you say anything to Mrs. Pfender, speak to her? A Oh, yes, I attempted to find out what the cause of the condition was, of course.

Q What did you find out? A I found—in the first place, I had a great deal of difficulty eliciting any story; I found she was very reticent about talking about it. I explained to her that

40

*Dr. Harold J. Harris, direct.*

I couldn't possibly make a diagnosis and do anything for her unless she would co-operate with me and tell me what the situation was. In other words, what she had on her mind and worrying her.

Q Did she tell you? A Yes, finally.

Q What did she say? 10

Mr. Lum: I object, unless Mr. Pfender was present.

Objection sustained.

Q Was Mr. Pfender present? A Mr. Pfender was not present throughout the whole conversation; he was in and out of the room.

Q Did you talk to Mr. Pfender about the conversation? A Yes, briefly. 20

Q Did you tell him what Mrs. Pfender told you? A Yes.

Q Now, will you state what it was that you told Mr. Pfender that Mrs. Pfender had told you? A Why, essentially that her condition at that time—what Mrs. Pfender told me was that—

Mr. Lum: What you told Mr. Pfender.

Mr. Blankenhorn: Just a moment. I wish to ask a question now. 30

Q What did Mrs. Pfender tell you?

Mr. Lum: I object.

The Court: His testimony is not clear that he told Mr. Pfender everything that Mrs. Pfender told him. You asked him what he told Mr. Pfender that Mrs. Pfender told him.

40

*Dr. Harold J. Harris, cross.*

Q What is it, doctor, that you told Mr. Pfender that Mrs. Pfender told you? A Why, my recollection of that is that I told Mr. Pfender that Mrs. Pfender had said that she was very much upset because of the revelations that he had made to her, either in the night or  
10 the night before or early that morning; I am not certain which.

Q Did you say what the revelations were?

A I told him that the revelations had to do with an affair with some woman.

Q What did he say? A As I recall it, Mr. Pfender simply replied that the situation was exaggerated; that it wasn't as bad as it seemed, or words to that effect. Naturally, this is a year and some months ago.

20 Q Did you determine the cause for Mrs. Pfender's condition? A I thought that was sufficient, because I felt that the nervous shock of a sudden revelation of that nature was quite sufficient cause.

*Cross examination by Mr. Lum.*

Q Did she show you a letter which she had received from her son at that time? A Not that I can recall.

30 Q Did she speak of it? A She mentioned her son, but I don't recall any letter.

Q Do you recall that she told you that she had just heard from her son at that particular time, and that he had just got a woman in trouble and she was going to have a baby? A I don't recall that she said she had just heard from her son.

Q Wasn't that subject discussed between you?

40 A The fact was mentioned that her son was in some difficulty.

*Dr. Harold J. Harris, re-direct.*

Q And that the difficulty had reference to an affair with a woman? A Yes.

Q And that that caused great excitement to her? A I am not sure that it had.

Q Was she of a neurotic type? A Yes.

Q Highly hysterical? A Highly nervous.

Q Have you treated her on other occasions? 10  
A Only this.

Q You were not called in a year or two before when she had had trouble? A I have no record. The office nurse looked up the record. I may have seen her, but I don't recall it.

Q Did you know Mr. Pfender up there? A Yes.

Q Do you know the type of man he was? A Yes.

Q And met him frequently? 20

Mr. Blankenhorn: I object as not cross examination. I have no objection if he wishes to make him his own witness.

*Re-direct examination by Mr. Blankenhorn.*

Q Would you say that it was the combination of the two events that caused her condition, or was one sufficient? A I think it was quite sufficient. The event that was uppermost in her  
30 mind was the discussion of Mr. Pfender's activity.

Q The revelation as to the woman? A Yes, that seemed sufficient.

The Court: Might either or both have been sufficient?

The Witness: I should say so.

*James Ross, direct.*

JAMES ROSS, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

Q What is your profession, Mr. Ross? A  
An architect.

10 Q Are you acquainted with Mr. Pfender and  
with Mrs. Pfender? A Yes.

Q Did you visit them in August of 1926? A  
Yes.

Q Where? A Westport.

Q Were you there on August 7th? A Yes,  
August 7th.

Q Do you recall an incident occurring between  
Mr. Pfender and his wife on that day? A What  
do you mean by an incident?

20 Q This revelation that Dr. Harris has re-  
ferred to. A Yes, I remember such an occur-  
rence.

Q What first brought that to your attention?  
Who told you about it first? A Mrs. Pfender.

Q And where was Mr. Pfender when she told  
you about it? A In the room.

Q Present when the conversation was had be-  
tween you and Mrs. Pfender? A I believe so.

30 Q What was the conversation; what did she  
tell you? A Well, I don't remember; they had  
been upstairs and both came down together, as I  
remember it, and both had made some statement  
to me. Mrs. Pfender said that she had received  
a letter in reference to some relation that Mr.  
Pfender had had with some other lady, and she  
had threatened to return home and bring suit for  
a divorce; and there was also something in the  
letter in reference to her son.

40 Q Did she tell you that Mr. Pfender had con-  
fessed to her? A Yes, she said that Mr. Pfen-  
der had confessed certain things to her.

*James Ross, direct.*

Q Did she say what they were? A She said  
that he had admitted going out in an auto to re-  
staurants and probably to theatres, but I have  
no recollection any more definitely than that.

Q And did Mr. Pfender reply to that? A I  
think Mr. Pfender had admitted certain state-  
ments that Mrs. Pfender had made. 10

Q In your presence? A Yes, with reference  
to the young woman.

Q With reference to the young woman? A  
Yes.

Q And then what happened? I mean, did you  
stay there? A Yes, I was there that night and  
the next day, and Mrs. Pfender had threatened  
to bring proceedings for divorce, and I urged her  
to give serious consideration to that, and Mr.  
Pfender also. And then they went upstairs 20  
again, and after a while Mr. Pfender came down  
and said that Mrs. Pfender had fainted, and  
wished to know what I would advise to do. I  
said that he should try to get a doctor, and he  
did—went out and got a doctor.

Q But the doctor didn't come until the next  
day, did he, Mr. Ross? A I am not certain as to  
what day this was. My impression was that  
this occurrence took place on Saturday. We had  
been out at the building in the morning, both Mr. 30  
Pfender and Mrs. Pfender and I, and then they  
returned and I went out to the grounds in the  
afternoon alone, expecting that they were coming  
out later. I thought that was Saturday, and my  
impression was that I returned afterwards, and  
Mr. Pfender and I went out to dinner, as Mrs.  
Pfender, he said, was indisposed, and my im-  
pression was that this occurrence all had taken  
place on Saturday, but it may have been on Sun-  
day that this development had taken place, be- 40

*James Ross, cross.*

cause I am not sure when—I thought it was the following day. I thought it was on Sunday that we returned to the city.

Q Did you return to the city? A Yes, by auto, the three of us. I thought it was Sunday, but it may have been Monday; I am not sure of that. 10

Q Do you know how long Mrs. Pfender was unconscious when she fainted? A Mr. Pfender had come down a couple of times, I should think fifteen or twenty minutes had elapsed between the times that he had come downstairs, and he came down once and said something to me about the condition of affairs, and then came down later and said that Mrs. Pfender had fainted, and he went out and got a doctor, but whether that was Saturday or Sunday, I have no recollection. 20

Q You helped them back? A Yes.

Q You all came home together? A Yes, and I thought that was on Sunday, but I am not sure.

*Cross examination by Mr. Lum.*

Q The letter that you spoke of was a letter from the son to the mother? A I have no recollection; she said that she had received a letter revealing conditions with reference to her son and in reference to Mr. Pfender. 30

Q She spoke at the same time of the fact of her son having gotten some woman in trouble? A Yes.

Q Mr. Blankenhorn used, as he has constantly used in this case all through, the word "confession"; was there at any time an occasion when Mr. Pfender admitted or confessed any wrongdoing, any immorality or anything of the kind? A I told Mrs. Pfender that I thought her im- 40

*James Ross (for Petitioner), direct.*

pressions must have been wrong in reference to that, because Mr. Pfender had been working so long with me over the plans and everything, that I thought the impression must have been misconstrued.

The Court: That isn't an answer to the question. The question is, did he confess any immorality or any wrong? 10

The Witness: No; he distinctly said that night that there was no wrong action at all on his part, and that he would be very willing, if Mrs. Pfender would not bring this suit for divorce, to break off all relations with the young lady.

Q And did he not say that he had merely taken dinner with her and an automobile ride to public places where there were many other people? A That is as I understood it. 20

Q Was there any question whatever of his, in your presence or at any time, admitting any wrongdoing or immorality whatever? A No; he said distinctly that night that there was no wrongdoing.

Mr. Lum: May I make this witness my own witness as to one feature which is not cross examination? 30

*Direct examination by Mr. Lum.*

Q You have known Mr. Pfender for some time? A Yes, for over twenty years.

Q And worked in connection with various plans? A Yes.

Q The property at Westport was taken in the name of both husband and wife jointly? A I have no knowledge of that; that is not definitely. 40

*James Ross (for Petitioner), cross.*

Q Did you ever at any time observe any unkindness or cruelty on the part of Mr. Pfender toward his wife? A Never.

Q By word or action? A Never; always very considerate and courteous in their relations in my presence.

10 Q What type of man was Mr. Pfender, a brute or kind and considerate man? A I should say very kind and considerate in his treatment of all persons that he came in contact with, as far as I observed.

*Cross examination by Mr. Blankenhorn.*

20 Q Would you say the same about Mrs. Pfender's conduct toward her husband? A As far as I observed, always courteous in their relations with each other, except on this occasion at Westport.

Q Didn't Mr. Pfender say that this thing hadn't gone very far, this affair with this woman? A He said that there was nothing serious in the relation; nothing wrong in their relationship.

Q But he did say that he had kissed her? A I have no knowledge of that, no. I have no recollection that he admitted such a thing as that.

30 Q Didn't Mrs. Pfender say that he had admitted it to her? A I don't know; I don't remember. Mrs. Pfender made various statements, but I don't remember anything definitely except as to the auto riding and the theatre and restaurants. She may have made such a statement.

Q And didn't say that he might have kissed her but that that wasn't wrong? A I don't know whether he made such a statement or whether she made the statement to me.

40 Q That statement might have been made? A It might have been made.

*Dr. Walter S. Washington, direct.*

Q There at Westport? A Yes, but I have no recollection of it.

Q Did he say that he had put his arms around her? A Not that I remember. Mrs. Pfender had made various statements about what Mr. Pfender admitted, I think, but what those statements were I have no recollection beyond those three items. 10

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DR. WALTER S. WASHINGTON, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

Q Doctor, you are a practicing physician in this county? A Yes. 20

Mr. Blankenhorn: Will you admit his qualifications?

Mr. Lum: Yes, sir.

Q Do you know Mrs. Pfender? A I met her once.

Q This lady here (indicating)? A Yes. I wouldn't know it was the same woman.

Q Do you know Mr. Carl D. Pfender? A I met him once or twice; I wouldn't know him if I saw him now. 30

Q Did you make an examination of Mrs. Pfender in order to determine her mental condition? A Yes.

Q At whose request? A I cannot say that I remember now at whose request it was. It may have been Dr. Beling's; I really don't remember.

Q It has been testified, Dr. Washington, by Mr. Harold Simandl that he saw a commitment 40

*Dr. Walter S. Washington, direct.*

similar to the commitment papers that are used in the Domestic Relations Court for the commitment of insane patients to the State Hospital and that that had been signed by you. That is, a commitment for Mrs. Lillian E. Pfender, or papers similiar to such a commitment, on the  
10 front of which was Lillian E. Pfender's name, and a certificate signed by you. Have you a recollection of such a paper? A I have not, and I wouldn't believe it unless I saw it.

The Court: Have you any recollection of ever having signed such a paper?

The Witness: None whatever.

The Court: You said you made an examination?  
20

The Witness: I made an examination.

The Court: Do you recall having made a certificate after that examination?

The Witness: I did not. I am positive that I didn't; I should have to see the paper before I would admit it. I don't have the slightest recollection. In fact, my remembrance of the circumstances would lead me to believe that I couldn't possibly have made  
30 out a paper.

Q But the other physician who made the examination was Dr. Beling? A Yes.

Q Did Mr. Pfender sign any paper for you?  
A No; he did not.

Q At your suggestion? A No, none whatever; nothing to do with it.

The Court: Doctor, after you had made  
40 the examination of Mrs. Pfender, did you

*Dr. Walter S. Washington, cross.*

think it was such a case as would warrant you in signing such a certificate?

The Witness: I think it would.

*Cross examination by Mr. Lum.*

Q Doctor, you came in touch with Mr. Pfender  
10 at that time? A Yes.

Q You heard of the revolvers, and so forth?  
A Yes.

Q And threats to shoot and kill the husband?  
A Yes.

Q Was all that was done there a matter of precaution in the matter of examination, and so forth, to be prepared for emergency, or was it an effort of a man to railroad a wife into an insane asylum? A It was an effort to find out  
20 what her mental condition was.

Q What was his attitude; one of consideration or otherwise? A I don't remember very much about it; he was not vindictive or anything of that character in the matter.

Q Do you remember whether the matter of encouraging the wife to go to a sanitarium for change and rest came up for consideration? A Yes, I remember that it did at some time. You see, I saw her with Dr. Beling one afternoon at  
30 her home, and some time after that he wanted to see her again and go over the case again, and we went up one evening and we were not allowed to enter the house, and we didn't see her.

Q Do you know from her statements to you whether she considered her husband guilty of adultery and immorality? A She connected his name with some young woman that I think was in his office.

Q And do you remember whether she made  
40 the statement that he had spent the night with

*Dr. Walter S. Washington, re-direct.*

her and taken her to a hotel? A No; I don't recall it, no.

*Re-direct examination by Mr. Blankenhorn.*

Q Did you question Mr. Pfender as to the  
10 truth of those allegations? A Which?

Q The allegations as to his conduct with the young woman. A I don't remember as I did.

Q Did you know—did Mrs. Pfender tell you that he had told her while they were at Westport that he had taken this young woman out riding and to restaurants on five or six different occasions? A No, I don't remember that; I remember that he did say—yes, I think he said himself that he had been out, but he only mentioned—my recollection is—one time.

20 Q But did she tell you? A I think she did.

Q And you spoke to Mr. Pfender about it? A Yes, and he admitted that he had been out with this young woman, but I don't remember more than once.

Q And wasn't that the cause of the great excitement on Mrs. Pfender's part? A I don't know that there was one cause more than another; she was very considerably excited; very voluble and very talkative about a good many  
30 subjects. I cannot tell you now, without consulting my report that I made at the time; I don't remember.

Q Did you make a report at that time? A No, I didn't make any report, but I took notes. But I understood the matter was disposed of. I was surprised when you spoke of having made out papers, because I supposed the matter was disposed of. I never heard anything more about it; I never saw Mrs. Pfender again and never  
40 saw him again.

*Dr. Walter S. Washington, re-cross.*

Q Was your first visit prior to September 28, 1926? A I think it was, but I am not positive; I think it was, though, Mr. Blankenhorn.

Q You remember the night that you went there and couldn't get in? A Yes, I remember that.

Q That I understand was the night of October 1, 1926? A Yes. 10

Q How long before that was it? A I don't remember that.

Q How long before that was it? A I don't remember that; not very long.

Q It was a Sunday that you had seen her, wasn't it? A No; I saw her at her home?

Q Yes. A No; I think it was on the afternoon of a week day, I think so. I could tell that by looking at my books. 20

Q Did you question Mr. Pfender as to his sexual relations with his wife; that is, as to whether he was having sexual relations with his wife? A I don't think so; I don't remember.

Q Wouldn't that have some bearing upon her condition and his? A It would have some bearing on the relations with each other, of course.

Q As to her mental condition? A Oh, her mental—no, I don't know that it would. 30

*Re-cross examination by Mr. Lum.*

Q Have you a recollection of Mrs. Pfender speaking herself of revolvers? A Yes.

Q And of a threat to shoot her husband? A Yes.

Q Did you ever come in touch with me in connection with this case, directly or indirectly, report to me or send me any papers, or see me in connection with it? A I don't think so. 40

*Rev. E. S. Carson, direct.*

REV. E. S. CARSON, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

Q You are rector of what church? A Christ Church, Ridgewood, New Jersey.

10 Q Do you know Mrs. Pfender? A I do.

Q Do you know Mr. Pfender? A I do.

Q How long have you known them? A About eleven years.

Q Have you known them intimately? A More intimately in the first four of those eleven years, from 1916 to 1920; they were parishioners of mine in Christ Church, Ridgewood.

20 Q What would you say as to Mrs. Pfender's attitude toward her husband and Mr. Pfender's attitude toward his wife? A During the period that I intimately knew them, that is, when they were parishioners of mine, I would say that their relations then were splendid, fine, between husband and wife; I wouldn't ask for anything better.

Q Did you ever hear Mrs. Pfender threaten her husband with any bodily harm? A Never.

Q Did you ever hear her complain of his conduct? A No.

30 Q Did you ever hear her complain of his personal appearance? A During those four years that they were parishioners of mine?

Q During any time that you knew them? A Never.

Q And what would you say of Mr. Pfender's attitude toward his wife? A During that time, so far as I could see, he was treating his wife properly.

40 Q After they left Ridgewood did you come in contact with them? A Not in their home,

*Rev. E. S. Carson, cross.*

but only in public functions, like at the Bishop's reception, affairs of that kind, but not in their own home.

Q How frequently did you see Mr. and Mrs. Pfender? A At least once a year; about once a year.

10 Q Did you visit them in the Glen Ridge home? A No. They were transferred from my parish to the parish in Glen Ridge and of course they were no longer parishioners of mine.

Q And after they left, did you keep up your acquaintance with them? A Only by these visits that were made there at public functions; of course, I didn't visit them in their own home.

Q When was the last you saw of them? A About two years ago.

Q That is to say in 1925? A About 1925. 20

Q And where was that? A That was at a public function here in Newark.

Q Can you give us the date? A I think it was in the fall of 1925, at the Diocesan House, at a reception which was being held there.

Q Would that have been in December? A No, it wasn't as late as that; it was at one of our general conventions. It would have been in November, because our convention is in October.

30 Q Did you notice any strained relations between Mr. and Mrs. Pfender? A None whatever at that time.

*Cross examination by Mr. Lum.*

Q At the time Mr. Pfender moved away, you wanted him as one of your vestrymen, did you not? A No, I did not.

Q Didn't you speak to him about that? A Never, sir. 40

*Frances E. Price, direct.*

Q You are sure of that? A I am very sure of that, sir. In what way did I make that statement? In writing?

Q No, didn't you speak to Mr. Pfender about becoming one of your vestrymen? A He couldn't become one of mine after he left the parish.

Q I mean while he was there, just before they moved away? A No, sir.

Q You had a very high regard for him? A I had a high regard for him then.

Q You considered him a fine Christian gentleman? A At that time, yes.

Q Nothing that you had ever seen of him has caused you to change your mind a hair's breadth, has it, sir? A I don't know what has happened, sir, since he left.

Q Nothing that you have ever seen, is my question, has caused you to change that view? A Not that I have seen.

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FRANCES E. PRICE, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

Q Mrs. Price, where do you live? A I live in the home on Ridgewood avenue next to the Pfenders' home.

Q Do you know Mr. and Mrs. Pfender? A I know Mr. and Mrs. Pfender.

Q How long have you lived there? A About six years.

Q And you have known them all that time? A Yes.

Q Have you visited in their home? A I have been in their home many times.

*Frances E. Price, direct.*

Q Can you tell me when was the last time that you were in their home? A I have been in their home many times, and I have been in their garden; they have a very beautiful home and a very beautiful garden, and Mrs. Pfender has always been exceedingly interested in her home and in her garden and in her pets, and I have been in the home and I have visited with her across our hedge. I have seen Mr. and Mrs. Pfender many times in their garden together; I have seen them play croquet.

Q You say you saw Mr. and Mrs. Pfender often in the garden? A Yes.

Q Did Mrs. Pfender ever complain to you or say anything to you about her husband?

Mr. Lum: In his presence. If not in his presence, I object.

The Witness: Not in his presence.

Mr. Lum: I object.

Mr. Blankenhorn: The allegation is that this woman was maligning him among his friends, that he had no friends.

The Court: There has been no testimony to the effect that she ever said anything to this witness. The objection is sustained.

Q When was the last time, Mrs. Price, that you were in the home of Mr. and Mrs. Pfender when Mr. Pfender was there? A I should judge it was about two years ago. Now, at Christmas time, I went in late in the afternoon to call on Mrs. Pfender, and Mr. Pfender's sister, Miss Pfender, was there, and I had a very pleasant call, and we were chatting. I had never met Miss Pfender before, and I was introduced to her, and before I—

*Frances E. Price, direct.*

Mr. Lum: Was Mr. Pfender present?

The Witness: Mr. Pfender came home while I was there.

Q Where were you when Mr. Pfender came home? A I was in their living room.

10 Q And did you see Mr. Pfender greet his wife at the door? A Mrs. Pfender left the room to greet Mr. Pfender when he came into the hall.

Q Did you see them? A I cannot say that I saw them, but I saw them together when they entered the room; I judge she went to the door to greet him; she left the room.

Q Then came into the room together? A Yes, they came into the room together.

20 Q What was his attitude toward her at that time and her attitude toward him? A Very natural; she said, "Carl, here is Mrs. Price, will you come and meet her?" And he did.

Q And was Miss Helen Pfender there? A Miss Pfender was there.

Mr. Blankenhorn: I understand your Honor will not permit me to examine the witness as to statements made out of Mr. Pfender's presence?

30 The Court: Statements concerning what?

Mr. Blankenhorn: Complaints made about her husband.

The Court: No. Suppose you should ask me; I would say no. What difference does that make, if she never did say anything to me about it? That is what you want to prove, that she never told this woman anything derogatory of Mr. Pfender's character. I don't care if she never did.

40

*Levi W. Halsey, direct.*

*Cross examination by Mr. Lum.*

Q You at all times saw Mr. Pfender always treat his wife with kindness and consideration whenever you saw them together? A I never saw them together, only across the hedge.

Q But whenever you did, your testimony is that he always treated her kindly and considerately? A They apparently were very natural in their relations to each other. 10

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LEVI W. HALSEY, sworn for defendant.

*Direct examination by Mr. Blankenhorn.*

Q Dr. Halsey, are you a practising physician in this State? A Yes. 20

Q Licensed to practise by the State? A Yes, sir.

Q And practising where? A Montclair.

Q How long have you been practising? A In Montclair thirty-five years.

Q Do you know Mrs. Lillian Pfender? A I do.

Q Do you know Mr. Carl Pfender? A I do.

Q Did you visit Mrs. Pfender professionally at any time in the year 1926? A I did, in March. 30

Q In March, 1926, what for? A Attack of grippe.

Q How many times did you visit her, and over what period? A I have the dates here, copied from my ledger: March 12, 13, 14, 15, 16, 17, 18, 19, 20, 22.

Q When you went there who let you in the house? A No one. 40

*Levi W. Halsey, cross.*

Q How did you get in? A Sometimes the door was open. I would find the door open when I—once I went there and couldn't get in and I went away and came back, and the door was opened the second time.

10 Q You rang the bell and no one answered the bell? A No, no answer.

Q When you went back, how did you get in? A The door was open then.

Q Was there another time when you were unable to get in? A One other time I could not get in; I walked around back of the house; the gardener was working back there and he told me to go up the back way, which I did.

20 Q Do you see the gardener here, in the next to the last row? A I don't believe I would recognize him.

Q Did you see any one there in the house taking care of Mrs. Pfender? A No.

Q So far as you know, she was there alone? A As far as I could see, yes.

Q You never saw any other person there, than the gardener? A Her husband was home at times when I called.

30 Q That would be at what time of the day? A I don't recall; some of those visits were made on Sundays, when he was home, and I remember of seeing him on several occasions.

Q But outside of Mr. Pfender and outside of the gardener, did you ever see anyone else? A No.

*Cross examination by Mr. Lum.*

40 Q Do you recall one evening when Mr. Pfender was speaking to you, just before you went to see Mrs. Pfender and Mrs. Pfender said, "He is talking about me behind my back,"

*Lillian E. Pfender, direct.*

or words to that effect? Do you recall that incident? A I do not.

Q Doctor, Mrs. Pfender was confined to her bed for about four days? A About ten days.

Q To her bed? A Yes.

Q Do you know where her son was? A No. 10

Q Do you know whether he was employed at the time or not? A No.

Q You never saw him there? A No.

Q Did you ever see her sister there at any time? A No.

Q Did you know she has a sister in this vicinity? A No, I did not.

Q You saw no friends or associates or acquaintances of hers at the house at any time you were there on any of those visits? A Other than her husband. 20

Q No one else excepting her husband? A No.

Q When he was there, will you say whether he treated her with kindness and consideration? A Yes, as far as I observed.

Q You observed nothing to the contrary? A No.

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LILLIAN E. PFENDER, defendant, sworn. 30

*Direct examination by Mr. Blankenhorn.*

Q Mrs. Pfender, when were you married to Mr. Pfender? A 1902.

Q Whereabouts? A In Plainfield, New Jersey, at Grace Episcopal Church.

Q Where did you live after that? A We lived in New York and we lived in Montclair. 40

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Q How soon after your marriage did you move to Montclair? A Right away.

Q How long did you live there? A We lived there a year and a half, and then we went to New York City and took an apartment for six months, and then we came back to Montclair again. 10

Q When did you go to Ridgewood? A I think in 1908 or 1909, and we were there one year and then we went back to our home on Mountain aveune, Montclair.

Q And then did you go back to Ridgewood? A No, when we sold our house in 1914, I think it was, in Montclair, we went the year the war broke out in Europe, and that is the year we sold the house, and we went to Ridgewood to live then, and I believe we lived there up to 1920, the spring of 1920, when we moved to Glen Ridge, New Jersey, in April; I think it was April 26, 1920, that we moved to Glen Ridge. 20

Q And lived there ever since? A We have lived there ever since, right up to the present time.

Q That is the house you are occupying now?

A At the present time, yes.

Q And while you were in Ridgewood, did you know Mr. Carson? A I did. 30

Q Did you attend his church? A I did.

Q And your husband? A Yes.

Q You have no children of this marriage, have you? A No.

Q You have a son of a former marriage? A Yes.

Q In 1912, did you know of Mr. Pfender having taken some neighbors on a fishing trip? A I knew that he went away with a salesman in his business. He told me he did, but I don't know 40

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of it personally, because I didn't see the man come or go.

Q You didn't quarrel with him about that?

A Never.

Q Did you break a fishing rod belonging to your husband? A Never. 10

Q Did you ever say to him, offering him a short piece of fishing rod, "There is your fishing rod"? A Never.

Q Did you ever object to having the pictures of his mother and sister or his relatives about the house? A Never; I loved them all; they were very nice to me.

Q There were some photographs of his relatives, were there? A Yes, on the wall, before the room was decorated. We decorated it just before we sold it. My husband thought it would be a good idea to decorate and have everything look pretty and nice and we could sell it more easily, because it was an expensive house, and it would look more attractive, and when the new decorations were on, he said, "Don't tack up the wall with small pictures." My son had done it so much, and around our mantelpiece we had all these little photographs of my son when he was a baby and as he grew up, to the age of eight years old, and were tacked along, under a large picture of his mother and aunt were both sides, and he said, "I don't want the walls tacked up with little pictures," and he was very angry when my son started to put up pictures on the new wallpaper in his room, so he took the pictures and put them on the shelf of his closet, where he kept his hats and such things, and I have never seen those pictures from that day to this. What he did with them, I don't know. 20 30

Q Do you remember 1923, when your husband went to Maine on a fishing trip? A I do. 40

*Lillian E. Pfender, direct.*

Q Did you tear up his fishing license? A I did not.

Q Do you know how it came to be torn? A Yes, I do.

Q Will you state how it was? A He came home—May I state the trip we had planned?

10 Q Had you planned a trip? A We had planned a trip to Washington.

Q What was the event? A We were all packed, ready to leave the next morning, and found it was the anniversary of our wedding, May 15, and he couldn't get away on the fifteenth, and this was just two or three days before the first of June, and he said it was more convenient for him to get away then, and he said that would be "my anniversary present to you, in addition to what I have given you." We were all packed up, ready to go. He came home from business in a very excited mood. I had been at him to go to a specialist to see about his health. He couldn't sleep, and hadn't slept for a number of years. He suffered from insomnia. And I made him go to see this Dr. Holland, on East 40th street—I have forgotten the number—maybe thirty East 40th, I think that is the number; I may be mistaken in the number, but that is the street anyway, and he came home and told me—

30 he was in a frightfully excited condition; he couldn't stand still; he walked back and forth, nervously taking things out of his pocket and tearing them up, and he walked back and forth through our front rooms, all the way across from his sleeping porch, through my room, through the bathroom and through the sewing room then—where I keep my pets now—and I was sitting hemming curtains at the machine, and he came finally and sat down; I said, "What is the matter today?" He said, "I went to see Dr. Holland,

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as you wanted me to, and he tells me I am in a very serious state of health and he won't answer for the consequences unless I go away immediately and leave business; that I must get away from business; that it is affecting me so much so that I cannot sleep, and that he won't answer for the consequences. He said I must go out more, I must play golf every day," and he said, "I hate it; it is an old man's game; I don't want to do it," and he said, "I must take up horseback riding." I said, "that would be perfectly lovely; you get a beautiful horse and you will get attached to it; I am fond of animals, and you will learn to love it, and it is wonderful exercise. I think it is the best thing in the world." And I was all attention, because I loved him very dearly. That is the reason I wanted him to go to a physician, and had tried for years to get him to go, and he told me then, he said, "I am in such a nervous condition that I have got to get away at once." I said, "Well, that is good; now we will have a nice long vacation." He said, "I don't intend to go away with you." He said, "I am going to do as I please in the future," and I said, "Well, as long as you go and get away from business, I don't care where you go; you need to get away; you are at the grind all the time. Your nose is at the grindstone, and it is killing you; I would much rather you would have less money and take care of yourself." He said, "I decided to take a trip to Maine," and I said, "Well, that is fine. But," I said, "I did count on this trip so much." I said, "I have been wanting to go away for years and you wouldn't take me anywhere. You won't take me to theatres, you won't take me to concerts, you won't allow me to join the clubs; you said all

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they want is money, that is all every one is after." And it was the same in the church affairs; he wouldn't let me join.

10 Q Now, about this license, how did that get torn? A He came and sat down and he took things out of his pocket, put them on the machine, and he went on, and the argument started about his going. I said, "Can't you take me with you?" He said, "They don't take women up there," and I said, "Well, I would love to go. I would stay in the place, and I could stay and paint and I could do some fancy work or something while you go out in the boat," and he said, "No, they don't take women up there," and I said, "Well, I am sorry; I am awfully disappointed," and I cried, and he commenced—he  
20 was very nervous and he got to swearing at me, and he commenced taking the things out of his pocket and putting them on the machine, and he was tearing them up. He started and he walked up through the rooms—they all connected—and he started in through this way, back and forth, and there was a stream of papers that he had nervously torn all the time. He went downstairs and he went out in the grounds, and I looked out to see where he was, and he was walking up and  
30 down.

Q Where was the license? A I didn't know that they were licenses at the time, but I went in the guest room to look out the back room, and there were pink and green and yellow pieces of paper on the floor.

40 Q What did you do with them? A I picked them up and put them on the bureau. I said, "I don't know what they are," but I was curious, and just then he came in and up the stairs and went into that room, so I went in at my sewing

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again, and I tossed them on the bureau; I made up my mind when I did it, that I would piece them together and see what they were.

10 Q Never mind that. A I went back to the sewing machine and started hemming things, and he came in terribly excited again, and went over the same rigmarole about getting away. I said, "Carl, I want to go away on a vacation; I need to go; we both need a change." I said, "I would like to take a trip to Europe or to California." He said, "I cannot get away from my business to go with you, and he said, if you want to go, you can go anywhere. You don't have to take into consideration the money," he said, "I have got plenty."

Q Do you know what became of the license?

A That license disappeared completely from  
20 view.

Q You never saw it after that? A No, I went in to look to see if they were there, and they were gone.

Q Did Mr. Pfender go to Maine on a fishing trip? A He did the next day, the first of June.

Q What did you do? A I cried.

Q Was there an arrangement about your going on a trip? A Yes. I said, "I would like to go to Europe"; I said, "I would like to have  
30 the money now."

Q When was that? A That was the day before the first of June, 30th or 31st of May.

Q Was that when he was tearing up the papers? A Yes.

Q Did he say you could go to Europe? A Yes. He said, "You can go anywhere you want."

Q What was the arrangement made about money? A He said—he wrote out a check and signed it there and he said, "You can fill it in  
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for any amount which you need to pay for your expenses and clothing and so forth."

Q I show you Exhibit D. 36 for identification, and ask you if that is the check? A Yes, that is the check; this is his writing.

10 Q Did you attempt to cash this check? A I did; I went to the bank, the same bank, the Bank of the Manhattan, and presented it at the window, and they asked me to identify myself, which I did.

Q Can you tell what of the handwriting in that check is yours and what part of it is Mr. Pfender's? A It is all mine but the signature.

Q What about the date? A He told me to date it. I dated that myself. I wrote all this, the date and the amount, and he signed it only; 20 he left a signed check, you understand, for me to fill in.

Q Was there any statement as to how much you were to draw? A I said I would want between two and three thousand dollars, and I only made it out for two thousand.

Q This was to cover the expenses of yourself and anyone else? A He said he couldn't go with me, couldn't get away, and I would have to take Will with me to Europe.

30 Q When you tried to cash that check, where was Mr. Pfender? A He was away in Maine, in the Rangeley Lakes, in Maine.

Q Did you send him a telegram saying, "If you don't arrange for me to get the money, I will leave you and never come back"? A I never remember any such telegram.

Q Would you say you did or did not send it? A I did not, because I don't remember any such thing.

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Q Do you remember in 1924 when you went to a hospital in New York? A Yes, I do.

Q And had you been sick? A Yes, I had been suffering with neuritis and sciatica.

Q Who was your physician at that time? A Dr. Young—J. Van Dorn Young.

Q Who took you to the hospital? A My husband. 10

Q What was your purpose in going? A Just for an examination, to see what was the matter with my hip and back.

Q A physical examination? A A physical examination.

Q When you got there did you see your doctor? A No, he was not there, and they showed me to a private room.

Q Did you finally see the doctor? A I saw him the next morning. 20

Q Did you see the doctor in the morning? A I did.

Q What did you say to him with reference to your staying there in the hospital? A I said I didn't understand that I was to stay there for a week under observation; I said, "I came here for an examination only. I expected you to bring another specialist to examine my back, to see if there was anything the matter with the hip and back." 30

Q Is that all you said to him? A That is all.

Q Did you tell him you were going home? A I said, "The nurse said I am to remain in bed, and I understand there is a day and night nurse engaged to take care of me." I said, "It is perfectly absurd; I feel perfectly well, with the exception of this pain in my hip and back," and I said, "I refuse absolutely to go to bed and 40

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stay there a week under observation." I said, "You have treated me for some time and you know very well when I tell you I have this pain that I know what I am talking about."

Q Is that the substance of what you told him?

A Yes.

10 Q And you told him you were going home? A Yes; I said, "The nurse said it was to be a surgical operation, and," I said, "there will be no operations on me."

Q Did you send for your husband? A My husband was there.

Q He called a taxi, did he? A No, he didn't. While he paid the bill, he told me, to save time, to go out and call one, and I called one, and put my baggage in, which was only a bag.

20 Q Did your husband go with you in the taxi to the ferry? A Yes.

Q On that trip did you strike your husband? A I never did.

Q Or hit him in the face with your hand? A Absolutely no.

Q Have any trouble with him at all? A None whatsoever.

30 Q Any complaint about your having insulted the doctor? A No, none at all. The only remark was, he said, "I think you will regret not having this operation." I said, "There will be no more operations."

Q Do you remember in July, 1924, going to Westport, New York? A Yes, I do.

Q What was your physical condition then? A I had had this sciatic trouble and I had been very ill in bed for about six weeks or so.

40 Q And what sort of a place it is that you were going to in Westport? A It is just a camp, a rough camp, where the cracks are

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through the floors and the wind blows through and the skunks get under and make it almost impossible to exist in the place.

Q What about the water in the house, the water supply? A The water supply is very hard, sticky water.

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Mr. Lum: To save time, because it is apparent the witness will not give a direct answer, there is not issue, that I know of, as to the house being inadequate.

The Court: I don't understand that there is any issue of that sort raised anywhere, particularly in view of the testimony.

Mr. Blankenhorn: There is testimony as to trouble between husband and wife at Westport at this time—the month of July; the testimony about destroying a boat, and testimony about Mr. Pfender having left, and a quarrel; I am going to explain that.

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The Court: Make it as short as possible.

Mr. Blankenhorn: I will hold her down as much as I possibly can.

Q What was the condition of the water supply in the house? How did you get hot water? A We had to fire up all the time and keep a wood fire; the range in the kitchen was a wood range, and it had to be kept up constantly to heat the small boiler.

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Q What servant did you have? A A Japanese couple.

Q Had you brought them with you from Glen Ridge? A Yes.

Q Was there any objection on their part to the place? A Yes; they didn't like it.

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Q Why not? A Because of the inconveniences, and the awfully hot fire that they had to keep in the kitchen, in order to have dish water, to wash dishes.

10 Q What about the bathing? A And the same for the bathroom; it was a very small boiler, and we kept it going constantly in order to have any hot water, and they refused to keep it going on account of the intense heat; it was in July.

Q When did Mr. Pfender come up? A Friday night, on the night train or boat, and arrived there between half-past five and six in the morning, I think, Saturday morning.

20 Q And what happened then with reference to these servants? A I had written him previously that the servants refused to keep the fire going and there was no hot water for the baths that were necessary; I had sciatica and couldn't bathe in the icy cold spring water, and he said, "Well, I told you how independent they were; they wouldn't even give me a pitcher of hot water in the morning."

Q What did he say? A He said, "Discharge them," and I said, "Why, I cannot do that and be left alone up here in this place and not well."

30 Q Then what happened? A I did what he requested. He went out fishing and I told them that Mr. Pfender said that they could leave on Monday and they said instead of that they would leave at once, on Saturday, which made it rather inconvenient, because Mr. Pfender was to stay there over Sunday.

40 Q When Mr. Pfender came back did they tell him that they were leaving? A Yes, they were all packed and the baggage on the back porch, and said, "We are going now."

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Q What did he say? A He came in and was awfully mad, and he swore, of course, and he said, "I have got to take these d— Japs back to the house so they can get their clothes."

Q There was no trouble with you about it, was there? A No.

10 Q Between you and Pfender? A No; he kissed me goodbye, and he said, "Dear, I am sorry to leave you alone, because I know you are not well, and I will try and get help and send them up to you."

Q What day of the month was that? A That was on a Saturday; I don't know whether that was the Fourth of July or not.

Q Had this Fourth of July celebration that Mr. Henckel spoke about, been held? A Yes.

20 Q It had been held? A Well, Mr. Pfender wasn't there at the celebration, I remember that distinctly. I don't think he was there.

Q And then he left with the servants? A Yes; they had to leave then, in order to drive home and get home in time.

Q Why did Mr. Pfender go with them? A He went with them to take them home, so they could get their clothing out of the Glen Ridge house.

30 Q And when did you next see Mr. Pfender? A I next saw him when I was on the way home, on Monday or Tuesday of the next week.

Q Did you have a gun up at Westport? A I never had a gun there, and I never saw one there.

Q Did you ever know that there was one there? A No, positively never saw one in the camp.

40 Q Do you know about Mr. Henckel coming to the door and trying to get in? A He simply knocked and I wasn't dressed; it was very warm,

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and I was heating water to bathe a dog, who had been sprayed with a skunk. I spoke to him through the crack of the door, and said, "I am sorry I cannot let you in; the dog has been sprayed with a skunk and I am heating water."

10 Q Is that the only reason you wouldn't let him in? A I was in a bathrobe; I couldn't let him in.

Q Did you see Mr. Henckel later? A Yes, the next day—I had already spoken to his wife at the back door and told her I was going home, and was all packed to go, and would he please go to the farm and telephone from Brown's farm for a conveyance to come and take me and my baggage to town.

20 Q Did he do that? A Yes, he did, and they came there at noon and he drove me personally to the train.

Q Did you ever threaten or ever say you were going to burn Mr. Pfender's boat? A I never did.

30 Q Did you have any conversation with Mrs. Henckel about that boat? A Yes; she came to me on the front porch while I was sitting there waiting for the time to come to take the train; I was all packed up, ready to go, at nine o'clock, and between that and one o'clock, the time I took the train, she sat there talking to me, and she said, "Mrs. Pfender, it is not safe to leave that beautiful boat down there on the shore. Mr. Pfender left it there, and Mr. Henckel took it in; we were afraid it would be washed out in the bay, which is five miles wide." She said, "People last year came and built fires on the beach and toasted corn there, and they are apt to go up there and do the same thing, and there are  
40 two oil cans standing near the boat, not far from

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the boat, where Mr. Pfender left it," and she said, "If anyone should build a fire there, the dry leaves and twigs would set fire to the boat, and the boat would be burned up." I said, "I don't care anything about it; I cannot bother about it, because I am not able to go up and down this mountain." 10

Q How far was it down to the shore? A It is very hard to judge distance, but it is quite a long distance down. I should say about a thousand or fifteen hundred yards from the cottage. I should think so, and then, very steep, and I wasn't well at the time; I couldn't pull the boat in; it is a sixteen-foot boat.

20 Q Do you remember seeing your husband on the train? A Yes, at Saratoga, when I was on the way down, there was a train coming up and I was amazed to see him coming in the car, and he was waving at me pleasantly; he sat down and kissed me and put his arms around me; he said, "I am awfully sorry about it; I am on the way up and only have a minute." He said, "Where are the animals?" I said, "In the baggage car." He said, "I am going on up." He had to hurry, because he only had a minute to spare.

30 Q He went to return with the luggage? A Yes—he didn't return with the luggage; he put a few things in, but the luggage went home by express, with the exception of a few cases I took with me.

Q Do you remember the Christmas of 1924, at the time when Mr. Pfender's sister was visiting? A Yes. She came and visited us for ten days over the holidays.

40 Q Do you remember having a quarrel with your husband? A Well, I cannot say I had a

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quarrel with him—yes, I distinctly understand the unpleasant situation you have reference to.

Q Will you tell us about that? A Yes; I left my husband in the evening and his sister sitting in the sun parlor talking, and I went upstairs for something—I don't know what; it might have been a handkerchief or something I needed, some little thing, because I was right back.

Q Did you overhear your husband and his sister talking? A Yes.

Q And what was it that you overheard? A She said, "It is Lillian's fault; it is Lillian's fault"; repeated it twice.

Q Then what did you do? A I stepped in the room; I said, "What is Lillian's fault?" and said, "I don't like the idea they won't tell me," and I said, "Well, you have been talking about me evidently very loud; I overheard," and I said, "I don't think it is nice to talk behind my back; if you have anything so say, say it right to my face," and she said to her brother, "Do you mean to let her talk to me like that and insult me?" And he got up and he said, "G—d—, go to H—"; he ran after me and chased me out in the hall and struck me in the hall.

Q Where? A He struck me in the lower chest, but I ran upstairs; struck me with his fist and scratched my face from this side, on my ear, with his finger nail, and I had a white line there for a week where I put on antiseptic powder to heal it.

Q Where did you go? A I ran up to my room, and he after me, and I went in and just got the door closed and slammed it and locked it, and he came up after me and he called me vile names and threw himself against the door three

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times, knocked this one solid panel out of the door, and came in there, and he rushed at me, and choked me and banked me up against the wall and bruised my shoulders very badly, so that the bruise showed there for two weeks after, and he said he would finish me, he would kill me, and I ran through the bathroom into the pet's room, and shut that door, and he smashed the panel out of that door, and I hid in the closet while he was picking up the pieces, and I ran up to the maid's room upstairs, and I slept in the southwest room that night, on the outside of this bed, with a steamer rug over me.

Q Do you know where he slept? A He went tearing around the house looking for me, but I was so frightened I stayed up there.

Q Did you use the telephone at that time? A Yes, I tried to get it, but I didn't succeed; he knocked it out of my hand.

Q When he burst the door open? A I was just at the telephone and I was going to call the police station, and he got in so quick that he took it away from me. I wouldn't have telephoned, only he came in and took it away from me.

Q Was the door repaired the next day? A He fixed it up with some fine nails himself that night, and the next morning he told me to tell Raphael to come in and repair it.

Q Did he repair the door? A He did, but he wanted a carpenter to do it. I said Mr. Pfender wouldn't have a carpenter.

Q Did he repair the door to the pets' room, too? A He did.

Q Was that broken? A No, but the panel was loose, the panel hung by the corner.

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Q Did Miss Pfender leave the next morning?

A When I went down to breakfast I saw someone had eaten, and it was her place. She had evidently a cup of coffee and toast.

Q Was she there? A She was not.

10 Q Has she returned to that house and visited you since that time? A She has.

Q Very often? A Quite often, for dinners and lunches and over Sundays.

Q Visited you personally? A Yes.

Q Has she given you gifts? A She has, and I have her.

Q You knew Mr. Pfender's mother quite well?

A I did; I thought a great deal of her.

20 Q And did you visit her in her last illness? A I did.

Q And where was that? A That was at Bloomingdale State Insane Asylum at White Plains, New York State.

Q Was that just shortly before she died? A All the time she was there we visited her at different intervals, and I saw her just before she died.

Q Was that at Bloomingdale? A Yes, at Bloomingdale.

30 Q At the Insane Asylum? A Yes, and she was absolutely out of her mind.

Q Was the door ever broken down again by Mr. Pfender into your bedroom? A It was. Our bedroom door was broken down four different times.

Q Was the first in 1924, the episode that you have referred to? A Yes, that was the night his sister was there; she heard him smash it.

40 Q When was the next time that the door was broken down? A The week after we arrived

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from Westport, New York; that was between the 10th of August and the 14th of August, 1926.

Q And when after that? A It was broken down twice that week and once the first week in September; it was four times altogether.

Q Was it each time broken down by your husband? A By my husband, when he was in a temper. 10

Q Did you ever make fun of Mr. Pfender's personal appearance? A Never.

Q Did you ever say that had his mother taken proper care of him his ears wouldn't have stuck out so? A Never.

Q Or many other comments on his personal appearance, to him or anybody else? A Never.

Q Did he ever make any comments to you about his personal appearance? A Yes, he did. 20

Q And when was that? A He said that people on the train had made remarks about his being such a homely man; a young man had made remarks about his ears, that he looked like a donkey, and when they got off at Jersey City one time when we were on the train going into the City, these young men got off and they made a noise like a donkey and waved their hands at their ears. 30

Q He felt rather badly? A Yes, he felt very badly and I felt very sorry for him, because I was very fond of my husband.

Q Did you say anything to him about it? A I did; I said, "You know you are very sensitive about that matter, and that could easily be remedied by going to Woodbury, the face specialist." I said, "it would be a simple operation and would remove the trouble, and you would never have any remarks passed about it." 40

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Q That was after he had spoken to you about it? A Yes.

Q Did you ever accuse him of riding in the park with young women? A I never did.

10 Q What is the fact about that? A He told me in the spring, as near as I can remember, when it was fit to ride up there in the Reservation—in the spring of 1926—he told me that his friend took him to ride in the Orange Reservation, where a lot of girls, shop girls came from Newark and rode pack horses there, and they had a good time with them, and they admired his horse Prince very much.

Q Did you ever make any complaint to him about that? A No, sir, but it hurt me very much to think that he was doing such things.

20 Q Did you tell him so? A Yes, I did, and I cried.

Q Did you on Easter of 1926, or at any other time, throw out the flowers that he had brought you? A Never.

Q Had you received a box of flowers from him? A At what time?

Q Easter, 1926? A A box of flowers?

Q Yes. A I do not remember.

30 Q Do you remember ever receiving a box of flowers from him? A I remember finding a box of flowers on the settee in the hall on my wedding anniversary, May 15th.

Q 1926? A Yes, but I don't know who put them there, but I found it on the seat in the hall.

Q Was that the first you knew they were there? A Yes.

Q What did you do with the flowers? A I put them in water and put them on the dinner table.

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Q Say anything to him? A I said, "That was very lovely of you to get the flowers for me." He said he was glad I was pleased with them.

Q In May, 1926, did you lock your husband out of the room? A Yes, I did, because he threatened to strike me.

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Q Where were you when he threatened to strike you? A I was downstairs in the living-room.

Q What was that about? A Why, that was over money.

Q What was it about the money? A Well, for the last three years that we lived together, he only gave me \$10 a month, and I objected to such a small amount; it was very embarrassing to me to have such a little allowance, and I asked to have it increased, and he said that all I wanted was money, money, money.

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Q And all you had had was ten dollars a month? A For the last three years we lived together, after that summer.

Q Prior to that time had he given you any money at all? A Never. He said that I had charge accounts and that was sufficient for all my needs. He didn't give me any spending money; he wouldn't do it. He didn't see why I needed it, he said.

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Q Had you been sick in March of 1926? A I was.

Q What was the trouble? A I had the grippe and I was very ill; I was really ill for five weeks all told.

Q And was that the time when Mr. Halsey attended you? A Yes.

Q Were there any servants in the house? A There were none at that time.

40

*Lillian E. Pfender, direct.*

Q And when was it before that there were servants in the house? A The week before I was taken ill.

Q Why did they leave? A I really cannot tell you; I don't know. I think we had a Swiss couple that were very incompetent, and we had  
10 to discharge them.

Q Did you speak to Mr. Pfender about it?

A He knew it. He couldn't stand the cooking.

Q When you were sick, was there anyone to take care of you? A There was no one.

Q How did you get your meals? A I had to get up as I felt like it, and I fixed Boullion soups and crackers and bread and rolls.

Q Did your husband wait on you? A No.

Q Why? A Because he refused to. He got  
20 angry that week because I refused to sign all rights to the real estate there in Glen Ridge and in New York State.

Q Had he made a request of you to sign deeds? A Yes.

Q And did he actually bring the deeds to you?

A He had some papers there and came and asked me to sign them and I refused; I said it is not—

Q Where were you at the time? A I was in  
30 bed sick and I had a temperature of 104.

Q It was at that time he asked you to sign?

A He did.

Q Didn't he get your breakfast when he got up in the morning? A No, he did not.

Q Was your son in the house? A My son was looking for work and he got odd jobs to do in New York, and he couldn't do that and take care of me, because he left on a very early train, between 6 and 7 o'clock in the morning, and he  
40 thought it was Mr. Pfender's business to take

*Lillian E. Pfender, direct.*

care of his sick wife or get someone to take care of her.

Q Did Mr. Pfender get your breakfast or dinner? A No, he did not. Only three times during that month, after he got something to eat then he brought me something from a restaurant in Montclair, where they were going for  
10 their meals.

Q How did the doctor get in to see you? A When I heard the car come in the driveway, I would get up and put on my wrapper and come down and take the night latch off the door so that he could get in, and then I would go back upstairs; sometimes he met me in the hall on the way up. I was very sick then—

Q Did you ask your husband to get someone to help you? A I asked him to get a nurse and I also asked him to get help; he said if I wanted  
20 them—he called me a dreadful name and told me if I wanted help or a nurse I could get up and go out and get it myself.

Q Was that after you had refused to sign a deed? A Yes, from that time he was very ugly to me.

Q I show you Exhibit D. 2 for identification, and ask you when you received it? A Those were in May; those were after my illness. I was  
30 ill in March, and this was in May.

Q Where did you get those papers? A He argued with me—

Q Where did you get them? A He put them under my door.

Q Do you know of a duplicate copy of this? A I do not.

Q This was left under your door? A Yes.

Q Did you reply to this letter? A I just spoke to him when I saw him; that is all.  
40

*Lillian E. Pfender, direct.*

Mr. Blankenhorn: I offer these in evidence.

(Marked Exhibit D. 2.)

Mr. Blankenhorn: I also offer in evidence the check which was marked Exhibit D. 36 for identification.

10

(Marked Exhibit D. 36.)

Q This incident in May of 1926, when Mr. Pfender broke down the door, was that before or after you had received the letter that has just been offered in evidence? A I call them notes.

Q These notes D. 2? A There are several notes that were put under the door at different times; they are not all one note; several, I think.

20

Q When was it with reference to your receiving these notes that the door was broken down? A Well, the doors were not broken down then; they were broken down in August and September. He threatened to break them down if I didn't unlock the door. I locked the door because I couldn't stand his shaking me and putting his fist in my face, and I said, "Please write the notes and put them under my door."

30

Q That was May, 1926? A Yes.

Q Did you go to Westport that summer? A Yes, I did, June 25, 1926, we drove up. Let me see—did we drive up? I don't know whether we drove up or went on the train.

Q While you were at Westport, Mrs. Pfender, did you receive those letters from your husband? A Yes, they are all from him; I received them all.

Q Did you also receive this letter dated August 4, 1926? A Yes, I did.

40

*Lillian E. Pfender, direct.*

Mr. Blankenhorn: I offer that in evidence.

(Marked Exhibit D. 27.)

Mr. Blankenhorn: I wish to offer all these exhibits in evidence, heretofore marked Exhibit D. 3 to D. 19 for identification.

(Marked Exhibits D. 3 to D. 19.)

10

Q Mr. Pfender was not at Westport during the whole of that summer, was he? A No; he only came up for week-ends; usually from Friday night until Sunday night.

Q Was there a time when he made an admission to you respecting a young woman? A Yes.

Q That was on the evening of August 7th?

A A Saturday evening.

Q Where were you? A I was upstairs in my bedroom, while he was shaving.

20

Q Tell me what you asked him; what brought about the admission? A He had cursed and sworn at me that afternoon and acted so hateful at me and had been when no one was around, I said, "Well, when I left home, I thought you would treat me decently if I came up here;" I could not understand why he should treat me like that. I had lovely meals for him when he came up, and I went up to his room, I said, "Carl"—this was in the evening, I should say between 7 and 8 o'clock, and I said to him, "Now, Carl, I want you to tell me the truth; you haven't been treating me right for some time, and you are writing lovely letters; why do you curse and swear at me when you come up and treat me in this manner? I cannot understand. You don't want to take me anywhere or do anything for me, and I cannot endure this loneliness up there."

30

I said, "I want you to tell me the truth; is there

40

*Lillian E. Pfender, direct.*

another woman in the case?" And he hesitated a moment, and he said, "Yes, there is another, Lillian."

Q What else did he say? A I said well it was a shock to me. I said, "How long has this been going on?" And then he was very nervous and he didn't hardly know what to say. He was  
10 taken by surprise, and he said that it had been going on for five weeks only, first; and then he stretched it eight months, and then he said he had been interested in her for eight years.

Q What did he say had happened? A He said he had met her at Jersey City in the car evenings and taken her out riding on the Jersey City Boulevard until very late, and didn't get home until late in the morning, and he had hugged her and kissed her and taken her to dinners and luncheons, and he had bought her all kinds of presents, naming the last two, which was  
20 some kind of scarf, at Christmas time, and a wrist watch.

Q Did he say who the young woman was? A Yes.

Q And was she an employee in his office? A He said she was employed in another department over which he had no control, but I found out afterwards—  
30

Q When he told you that, who was at the Westport house? A Mr. James Ross; he was downstairs in the living-room; the house was just a shell.

Q What did you do when your husband told you this? A I said, "Well, I am going to pack up and go home; I will not stay here and finish the house; there is no use in it." I went down immediately and told Mr. Ross the same thing; I said—  
40

*Lillian E. Pfender, direct.*

Mr. Lum: I object.

Q You went down and spoke to Mr. Ross, did you? A Yes.

Q Did your husband come downstairs? A When he was through shaving, he came down.

Q Did you and Mr. Pfender and Mr. Ross talk about this matter? A Yes; I stated the whole matter to Mr. Ross. **10**

Q In Mr. Pfender's presence? A Yes, just exactly what Mr. Pfender told me.

Q Is that what you did? Just tell the Court. A Yes, just exactly the same story.

Q What did Mr. Pfender say? A Well, he said he was very nervous, and he tried to slide out of it.

Q Tell us what he said? A He admitted only that he had been going with her for five weeks, at first. **20**

Q I am talking about when you had come downstairs and was talking in Mr. Ross's presence. A In Mr. Ross's presence, he admitted that he had only been going with the girl five weeks, taking her for rides on the Jersey City Boulevard and to theatres and restaurants; he had only hugged and kissed her, and that there were no sexual relations. He said that right before Mr. Ross. He said there had been no sexual relations as yet. He said, "I have never had anything to do with any other woman sexually."  
30

Q Did you ever at any time, then or after that occurrence or prior to that time, engage a detective to watch your husband? A Engage a detective? Never.

Q Did you ever tell him that you had engaged a detective to watch him? A I never did. **40**

*Lillian E. Pfender, direct.*

Q Did you say anything at that time about being divorced from your husband? A I said, "I am going home to Glen Ridge, I will not finish this house, and I want you to make an appointment with Miss Hass, the young girl in your office, and I want to talk with her and see how far this matter has gone." We made an appointment to meet at the Hotel Brevoort.

Q But you went to bed ill? A Yes, I sat up all night and packed up all my things and I started to lay down at half-past four the next morning, which was Sunday morning, and I either tripped on the rug or I fainted dead away, I was so upset. I was excited; I didn't eat any dinner that night; I sent Mr. Ross and Mr. Pfender out, and I hadn't had a mouthful since that Saturday morning, and I was very faint for the lack of food and excitement. The shock of hearing about my husband being fond of another woman was terrible to me, because I thought the world of him, and I fainted, and I must have struck my head against the iron projection on the trunk or the bed.

Q Did you see Dr. Harris? A Yes, I saw him Sunday morning.

Q Can you tell about the time? A I should say it was around 9 o'clock.

Q And do you know how long you had been ill? A I cannot say, I must have been unconscious for some time.

Q Did you tell Dr. Harris? A I told him that I had fainted or fallen or I had hurt myself or something; I didn't know what had happened to me. When a person faints, they don't know what happens.

Q Did he ask you what the trouble was? A Yes, he said "this is not an ordinary faint,

*Lillian E. Pfender, direct.*

Mrs. Pfender"; he said, "You have been up and around and doing your work in spite of your fractured rib that I have been treating you for," and he said, "I cannot understand this. Now, I want you to tell me," and I didn't want to tell him. I said, "No, I don't want to tell you." I said, "I would prefer not to; it is a private matter." He finally said, "I cannot help you properly unless you explain the situation, then I will know what to do. This is not an ordinary faint; it is like a total collapse." I said, "What makes you think so?" He said, "Mrs. Pfender, haven't you had a shock of some kind?" And I admitted I had, and he said, "What is the nature of the shock?" Mr. Pfender was coming in and out of the room and standing alongside of my bed, probably for ten or fifteen minutes at a time, then he would go in the hall and speak to Mr. Ross, and go downstairs and speak to him.

Q Did you after that go home? A Yes, the next day.

Q Drive all the way home? A Yes, all the way home.

Q Did you ever tell Mr. Dougherty that you had at one time stood alongside of your husband while he was asleep, and contemplated killing him, and then killing yourself? A Never.

Q Did you ever stand alongside of your husband while he was asleep and contemplate killing him? A I never did, absolutely.

Q You got back home about what time? A We arrived home at 12 o'clock that same day.

Q August 8th? A No, August 9th.

Q At Glen Ridge? A Monday night.

Q Was anything further said or done after this talk with your husband? A Yes, he argued all that night until 4 o'clock in the morning, and

*Lillian E. Pfender, direct.*

he took a bath and went to bed and got up and went into the city with Mr. Ross the next morning. Mr. Ross, the architect, rode home all the way with us.

Q Where did Mr. Pfender sleep that night?

A Right in the bedroom with me; we have twin  
10 beds; he didn't sleep any. He didn't go to bed until half-past four and he got up at half-past six.

Q Did you talk with Mr. Pfender about this affair? A I did. We made the appointment to meet at the Hotel Brevoort.

Q With whom did you make that appointment? A With Miss Hass, in his office.

Q Did you do that directly yourself? A No, my husband went in and said, "I will speak to  
20 her and talk to her."

Q He said that to you? A Yes, "and I will bring her to meet you at the Brevoort Hotel at noon."

Q Did you ever meet her at the Brevoort Hotel? A She didn't materialize.

Q She didn't come there? A No.

Q Did you ever speak to Mr. McKenney about this matter? A He came there in place of her.

Q Did you speak to Mr. McKenney? A Yes,  
30 I said, "I cannot understand why you are here."

Q Did you say anything to Mr. McKenney in the presence of your husband about this affair between your husband and Miss Hass? A I did.

Q What did you say? A I stated what he told me.

Q Did you make any request of Mr. McKenney? A No, I did not.

Q Mr. McKenney came to keep the appointment that you understood was made with the  
40

*Lillian E. Pfender, direct.*

young woman? A Yes, between Miss Hass, Mr. Pfender and I.

Q Did you talk with your husband after that about this affair? A Yes, every night when he came home, he broached the subject from the moment he arrived home.

Q Did he come home every night? A Yes;  
10 sometimes to dinner, and sometimes he would telephone he wouldn't be there for dinner, and came later.

Q Was there a time finally when you quarrelled about it? A He quarrelled about it every night; I said that I wanted to meet her, and he said he didn't want us to meet; he said there was nothing to it, one day, and the next day, he said he couldn't give her up. One day he said he made up his mind to be happy and live happy  
20 with me, and give her up, and the next day, he couldn't do it; and the request I made was, "If you will agree to give her up, discharge her from your employ and put her out of your life entirely, I will forget the matter entirely, and we will go on and live together happily," but he didn't do it; he kept bringing the matter up.

Q When was the last time you said that to him? A Many times.

Q When was the last? A The last time—  
30 it came up every night, Mr. Blankenhorn.

Q Did you have a quarrel with him about it? A He quarrelled every night about the matter, because I wouldn't—I just simply couldn't get over it; he quarrelled because I cried; he found me crying at night; he would come into the room; he couldn't sleep, and he walked around through the house and back and forth nights, because he suffered from insomnia for years, and he came in and lay down and put his hand on  
40

*Lillian E. Pfender, direct.*

my pillow and my face, to see if it was wet, and when he found it was, he knew I was awake, and he said, "You don't need to sham that you are asleep, because I know that you are awake," and he would start in arguing about this matter, and one night he said, "This is all nonsense; I don't  
10 care anything about this girl." He said, "You and I have lived together so long," he said, "we cannot get along without one another." He said, "Now, Lillian, I think you can get over this crying, if I go upstairs; it is very warm in here. I will go upstairs and get the bed from the spare room and put it out alongside of me in the porch." He went up and got the iron porch bed—

Q Do you remember when that was? A Yes,  
20 that was the first week in September—and he put up the bed—helped me make up the bed, and made me sleep there. I said, "I will take cold out here, and I am afraid of getting more neuritis."

Q That was out on the sleeping porch? A Yes; he said, "I will close some of the windows." He said, "Your place is right alongside of me, right here," and instead of sleeping in the bed alongside of me, he slept right in the little bed  
30 with me that night that he made up, and he came in every night and lay down alongside of me and said he couldn't sleep. He went from room to room, wandered around, and came and lay down beside me and put his arms around me and kissed me and said, "I am sorry; I am sorry."

Q When was it that you saw Dr. Washington and Dr. Beling? A It was the last week in September; I think it was on a Thursday afternoon,  
40 between four and five.

*Lillian E. Pfender, direct.*

Q How long was that before Mr. Pfender left? A It was a Thursday before he left—no, that was a week before.

Q About a week before? A I should say that was the third of September. To be absolutely correct, it was the third week in September, because he left a week later, on the first of  
10 October.

Q When was the last time that Mr. Pfender broke down the door of the bedroom? A The first week in September.

Q That was the last time? A Yes; he broke it down twice the week after we got home from the mountains, in August, you understand, which was between the tenth and fifteenth of August.

Q And each time you had gone there to get away from him for what reason? A He wanted to strike me because I insisted that he should discharge this girl from his employ. I wanted to read downstairs and he wanted me to come up to bed. I said, "I am sick and tired"—he would start the argument about the girl; I said, "When you are ready to give this girl up and discharge her from your employ, then I am ready to listen to you and be reasonable about the matter; but until then I refuse to go up with you."  
20

Q As a matter of fact— A But he did come to me and kiss me and lay alongside of me every night on the bed, in spite of all the fusses and made me kiss him.  
30

Q Did you have sexual intercourse with him? A I did; he forced me to.

Q And that continued up to what time? A It was up to two or three days before he left, and those two or three days he slept in the guest room, and when I went in there and kissed him good-bye in the morning, I saw the door handles roped, and I said, "What have you roped  
40

*Lillian E. Pfender, direct.*

those for?" He said, "Until I get over this—" I said, "What do you mean?" He said, "Until I get over this"—I don't like to say it; shall I say it?

Mr. Blankenhorn: No, never mind.

10

Q Did he tell you he was afraid you were going to shoot him? A No, he knew that I never attempted to.

Q Did you have any revolvers in the house? A Well, my husband had for two years—for several years.

Q Do you remember the two revolvers that were offered in evidence here in this case? A Yes.

20

Q Do you remember the larger one? A It belonged to my son, and my husband kept it under his pillow for five or six years, from the time we had an attempted robbery in our house; he kept it under his pillow, for protection, loaded.

Q Did you after your husband had left find a loaded revolver in his room? A In the bottom chiffonier drawer, when I was cleaning out the dresser.

Q Is that one of the revolvers offered here?

A I think it was before he left the house.

30

Q (Last question repeated.) A Possibly I found it, and I gave it to Dr. Beling; when he asked if there is a gun in the house, I said, "Yes, up in the store room." I had taken it up with my son's things, when my son left, in August. He said, "Mother, I have asked father for that gun, and he said he don't know where it is."

Q You are referring to which of the guns; which of the two guns did you give to Dr. Beling?

A I gave my son's gun to him. There was no  
40 other in the house.

*Lillian E. Pfender, direct.*

Q Is that the large one? A Yes; there was no other in the house.

Q Did you tell Dr. Beling who owned that gun? A I said "my son owns it and Mr. Pfender kept it under his pillow for five or six years, from the time we had this attempted robbery."  
10

Q Did you know that? A I knew it, but I didn't know where it was. He told my son he didn't know where it was, when he wanted to take it away when he left.

Q Where did you find the gun to give to Dr. Beling? A In the bottom chiffonier drawer of Mr. Pfender's.

Q You put it up in the store room? A When I found it after the house cleaning was over, I put it up with Will's things, in the store room, as he requested me.  
20

Q Had your son been in the military service during the war? A Yes.

Q What was he? A First, at the Plattsburg Training Camp, and then later on got into the naval reserve and he served twenty-six months in foreign service, in foreign waters, off the coast of Canada, and convoying toward the high seas back and forth.

Q The smaller of these two guns, did you have that? A I haven't seen the gun; how can I say? I would like to see it.  
30

Q Is that the gun that belonged to your son (witness shown gun)? A It looks like it.

Q Being the larger one? A Yes.

Q I show you the smaller of the two guns. A Yes, it looks like the gun that I bought for protection.

Q When did you buy that? A I bought that on September 19, 1926, because there were burglars operating in the neighborhood.  
40

*Lillian E. Pfender, direct.*

Q Did your husband know it? A I told him I was going to get it; I had diamonds and two chests of silver, and I wasn't going to have burglars break in and take anything.

Q Do you know Mr. Dougherty? A Yes.

Q He is your minister? A Yes.

10 Q Did you send for him after you came from Westport? A I told him about it one evening.

Q You told him about the admission your husband had made? A Yes; he told me to go back and let him talk to him, and he talked with him two and one-half hours.

Q In your house? A Yes, in the living-room, whispering.

Q Did Mr. Dougherty ask you if you had a gun in the house? A No, not that night. The next day he came over.

20 Q He asked you if you had a gun? A Yes, and I made no secret of it; why should I?

Q What did you tell him? A I told him I did; I bought it for protection. He wanted to know what kind of a gun it was.

Q Did you go and get it? A I did. He said, "I hope it is a safe one." "It most certainly is; I asked them to give me the best they had."

30 Q When you showed it to him, was it wrapped up? A It was in a box--the box it came in; a little box, as I remember it.

Q In this box? A I suppose that is it.

Q Was it tied up? A Yes, with a white ribbon.

Q Was it loaded? A No, it was not.

Q And after Mr. Dougherty looked at it, what did he say? A He said, "It is a very fine one."

Q Did he give it back to you? A Yes.

40 Q What did you do with it? A I put it back in the box.

*Lillian E. Pfender, direct.*

Q What did you finally do with it? A I gave it to the gardener.

Q Do you know what he did with it? A I do not.

Q Did you ever see it again until it had been produced here in court? A Never.

10 Q Is that the only gun you have ever had in the house? A I guess so.

Q Were there in fact burglaries in that neighborhood? A There were; there were two.

Q Had the gardener asked you for firearms? A Yes, he had.

Q Had he had a revolver before you gave him this? A He didn't have a revolver, but he said when he went to Italy, that they took it away from him.

20 Q Then you gave him this? A I gave him this.

Q When was the first time you saw Dr. Beling and Dr. Washington? A I think it was the third week in September, on a Thursday.

Q Can you give the exact day when you last had sexual intercourse with Mr. Pfender? A Well, he slept in the guest room for two or three days before he left; he left on October first. I think it was on September 28th.

30 Q Were there any quarrels between you after that time, about September 28th until the first of October? A No; he kissed me good-bye each morning when he went to business, and when he came home; things were apparently very quiet then.

40 Q You thought the thing had subsided? A Yes, I remember standing alongside of him, at the radio, and he put his arms around me, and I kissed him, as he often did; we were very affectionate to one another.

*Lillian E. Pfender, direct.*

Q On the first of October did he come home that night? A No, he didn't come home that night for dinner. The doctors had called up the day before, making an appointment to come that morning at eleven o'clock, and they didn't keep the appointment.

10 Q What doctors? A Dr. Beling; he said that he was going to come with Dr. Washington to see me, and wanted to know if I wouldn't see him.

Q What did you say? A I didn't see any reason—I said, "I cannot understand why I should see you, but it is perfectly all right; if you want to come, I will see you."

Q And they didn't come? A No, they didn't come.

20 Q When did they come? A They didn't come until about ten o'clock, or quarter-past, in the evening; it was very dark.

Q Had you retired? A No, I had not.

Q Was there someone in the house with you? A Yes.

Q Who? A Mrs. Conklin, a cook and general houseworker.

30 Q Had she made any statement to you with respect to the doctor? A She had told me three days before that my husband said that I was absolutely insane, and that he was going to try to get me into an insane asylum, and she said, "Of course, he has been telling me right along mornings when he goes out that he is in love with this girl."

Q That is what she told you? A Yes, "He said when he gets you in an insane asylum, he is going to have a grand time with his Peaches."

40 Q When they came into the driveway, who told you they were coming? A Mr. Pfender is shaking his head at me—

*Lillian E. Pfender, direct.*

Q Never mind that. (Last question repeated.)

A The gardener came in and told me, because the housekeeper had previously told me they were coming.

Q The gardener told you they were coming?

A Yes.

Q What was the housekeeper's name? A 10 Mrs. Conklin.

Q And where was she when they came there?

A She was in the kitchen.

Q What happened when they came to the door? A When they came to the door, they rang the bell, of course, and she told me previously about this, that they were coming, and not for a good purpose, and told me—

Q Did you go to the door? A She said, 20 "What will I do?"

Mr. Lum: I object.

The Court: Never mind the conversation.

Q Did you go to the door? A I didn't go to the door immediately, no; I told her not to go.

The Court: You have answered the ques- 30 tion.

The Witness: I went to the door.

Q Whom did you see? A I opened the door; I put on the outside light, so I could see who was there through the burglar bolt, and that left an aperture as wide as that (indicating), and I saw Dr. Beling and Dr. Washington and Mr. Pfender, and I went to the side window and looked out, and Mr. Dougherty was in the car and some woman in the back seat, and another 40

*Lillian E. Pfender, direct.*

man standing there; there were five men and some woman altogether.

Q How many cars? A All I saw in the driveway; there may have been one outside, but I didn't see that; it was very dark, and I put on these lights; that is how I saw them.

10 Q You didn't let them in? A I did not; I said to Dr. Beling—

Q Was Mr. Pfender present? A Yes, he was right there, right up close to the door, and Dr. Washington right along close beside, he was standing here (indicating).

Mr. Lum: Go ahead.

A (Continuing) And Dr. Beling said, "Well, Mrs. Pfender we couldn't get here when I said we would." He said "We have been out to dinner and we didn't get through in time," and I said, "Well, I am very sorry; I cannot see you at this late hour of the night." I said, "I am all alone now. Had you come at eleven o'clock, when you said you would, I would have had someone here with me, but I have no one with me now," and the housekeeper had gone up to her room—was on the way up there.

30 Q Did they leave then? A Yes, they did; they walked along the terrace, and I went and pulled the curtain up and watched them; I saw them get in the car and everything.

Q Has Mr. Pfender keys to the house? A Yes.

Q Did he ever come there again, to your knowledge? A When I was out in the garden Mrs. Conklin told me—

Mr. Lum: I object.

40

*Lillian E. Pfender, direct.*

A (Continuing) When I was out in the garden, he came and went up to his room and locked the door and packed up his things and took them away in the minister's suitcase that belonged on the back of his car; I went and looked in the car and wondered whose car it was, and saw it was ours, and looked in, and there was Mr. Dougherty's three black suitcases that he keeps on the back of his car, in the car, and Mr. Pfender's bag in there, and they were packed with clothing, but I didn't see Mr. Pfender.

Q What was the last time that you saw Mr. Pfender? A The last time I saw him was when he was backing the car out of the driveway with all his clothes, and he was looking up like this (indicating) at the house. That was the last time I ever saw him.

Q Did you keep the place locked after that against his getting in? A Just ordinary locks, but in January I had someone break in.

Q You don't know who it was? A No. The door was open at the head of the stairs and they broke in and broke open the closet door in my bedroom, and broke open my suitcase.

The Court: Just answer the question.

The Witness: I am sorry. It is hard for me. I am trying to do the best I can.

Q Did you engage counsel? A I had; just previous to that I had gone to the bank and asked for a lawyer.

RECESS.

Q When you gave this revolver to Mr. Dougherty, did you say you had bought that to kill Mr. Pfender with? A I certainly did not.

40

*Lillian E. Pfender, direct.*

Q Did you ever tell Mrs. Conklin that you thought Mr. Pfender was trying to poison you?

A Never.

Q Did you ever tell her that he had tried to drown you? A No. Drown me?

10 Q Where did you go right after the first of October, 1926? A The first of October, 1926? I was home that week.

Q How long did you stay? A I stayed until the eighth of October.

Q During that time did Mr. Pfender come home? A No, he did not.

Q Did you have any communication from him? A None at all.

Q Did you have any communication from anyone on behalf of your husband? A None.

20 Q Where did you go then? A I went to my lawyers and to Atlantic City.

Q How long did you stay in Atlantic City? A Nine weeks.

Q Then you came back? A I came back to my present home.

Q Was anyone with you? A I was alone.

30 Q When you came to the house? A Oh, no; when I came to the house, the lawyer that I had interviewed in Atlantic City, Mr. Edison Hedges, brought me back from Atlantic City on a Sunday, on the twelfth of December, 1926.

Q You went right to your home? A Right to my home.

Q Did you find Mrs. Conklin there? A Yes.

Q Did you ask her for your husband? A The lawyer asked where he could get Mr. Pfender, and she said she did not know.

40 Q I show you this Exhibit D. 41 for identification, and ask you where you found that. A I found it right on the dresser in the kitchen,

*Lillian E. Pfender, direct.*

where Mrs. Conklin must have left it. It is her handwriting, and the notes and the telephone numbers and everything. Mr. Dougherty's telephone number is on there, in her handwriting, where he can be found.

Mr. Blankenhorn: I offer this in evidence. 10

Mr. Lum: No objection.

(Marked Exhibit D. 37.)

Q Did you try to get in touch with your husband? A Yes. He said, "How do you think you can find him?" I said, "Call up Mr. Dougherty, I am told that he is living with Mr. Dougherty."

Mr. Lum: I object. I don't see the relevancy; it is after the cause of action had arisen, if there was any, and he has never come back. We admit he has never come back. 20

Q Did this revelation that was made to you in Westport, on August 7th, have any effect on your health? A It certainly did; it was—

30 Q What effect did it have? A Why, it was a nervous shock and so upset me terribly, so that I cried a great deal.

Q And did that continue after you got home? A Yes, it did.

Q And did it continue while Mr. Pfender was living with you? A Yes.

Q And has it had any effect on your health since? A Yes.

Q Since Mr. Pfender left the house? A Yes.

Mr. Lum: I object to this; there is no cross complaint. 40

*Lillian E. Pfender, cross.*

The Court: She has answered the question.

*Cross examination by Mr. Lum.*

10 Q Mrs. Pfender, you didn't believe this statement of your husband of any misconduct with any woman, did you? A I believed all that he told me.

Q You didn't believe it, did you? A I certainly did.

Q Do you remember in your pleadings filed in this case saying that you did not believe them? A Well, I believed only what he told me.

20 Q Didn't you say in the papers that you did not believe what he told you, but that he only said it for the purpose of being cruel to you? A In the first place.

Mr. Blankenhorn: The papers speak for themselves. I submit that that is not the statement in the papers.

30 The Court: The papers will show. If Mr. Lum asks a question not warranted by the papers, it is improper, but I wouldn't expect him to do that. If there is no foundation for it, then the question is unwarranted.

40 Q On page 3 of the answer and counter-claim, did you not say: "Defendant says that she does not know whether the statements made by her said husband are true, and that she does not believe that they were true, but does believe that the statements were made by petitioner merely to offend the defendant and to be cruel to her."

*Lillian E. Pfender, cross.*

Mr. Blankenhorn: I object to that on the ground that this is the pleading.

The Court: The objection is overruled.

A At first, I couldn't believe my ears when he told me. I said I think—

10 Q When you filed your answer in this case, which was the fifth of May, 1927, did you then believe that the statements about your husband's relations with other women were true? A He told me things and I had no reason but to believe what he told me.

Q In May, when you said you didn't believe they were true. A I said I think he must be crazy to have done such a thing; I couldn't believe it, in the beginning; but later on, I did; I had reason to believe it was true. 20

Q If in May you said you did believe they were true, then they couldn't have affected your health at that time? A It was just at the time.

Q Just after May you began to believe they were true? A May when?

Q May, 1927, is what I mean. A You see you have gotten the dates twisted.

The Court: The question is, Mrs. Pfender, whether in May, 1926— 30

Mr. Lum: Seven.

The Court: —1927, you believed what your husband had told you about his relations with this other woman.

The Witness: I tell you honestly and truly I didn't actually believe it; I was in doubt because I didn't have any actual evidence, but I had to believe what he told me. That is what I mean to convey; that is the way I mean it. 40

*Lillian E. Pfender, cross.*

Q Do you recall that in the presence of Mr. Ross your husband said that there had been no misconduct, that he had not kissed and had not hugged this woman, and had merely been to public places with her, where there were many other people? A No, I did not understand any such statement. 10

Q You have had no trouble with Mr. Ross, have you? A No.

Q You know of no reason why he should testify to that effect, if it were not true? A No.

Q Did you ever have any trouble with Mr. Henckel? A No.

Q Do you know why he should testify what he testified, that you would burn the boat? A I don't know of any reason myself, unless it was their personal dislike. 20

Q Do you know why he should have any personal dislike of you? A Because I am English and he is German, and he is decidedly pro-German.

Q You think he might have come here and committed perjury because of that? A I don't want to make any particular statement like that.

Q You heard this statement? A I did.

Q That you had a revolver? A Yes.

Q And that he broke it and took the cartridges out? A Yes. 30

Q And that is all false? A Absolutely.

Q You know of no reason why he should come here and testify to that fact in this court? A I don't know of any reason, but he did so.

Q Do you know of any reason why Mr. Dougherty should come here, and your rector, and testify falsely? A I cannot say.

Q You did hear him testify that you threatened to kill your husband? A Yes, but it was not true. 40

*Lillian E. Pfender, cross.*

Q As a matter of fact, you told the gardener, Raphael, that you wished your husband was dead; you told him that in September, 1926? A Never did.

Q Never did. How many guns did you have there? A How many guns? 10

Q Yes. A I never had but one, and I only had that 36.

Q Why did you only have that 36? A Because I gave it to the gardener.

Q Why did you give it to him? A I thought if we had burglars, he could use it better than I could. I never used one in my life.

Q You knew he had one? A No.

Q Didn't you go outside and ask for his gun? A No. 20

Q And didn't he refuse to give it to you? A No.

Q And didn't you thereafter give him a gun and say you want him to remember that you gave him this at a certain date, and mentioning another day? A No.

Q When was the last time you ordered any guns? A I don't remember.

Q Please search your memory; you have ordered so many that you cannot remember the last one? A Well, I don't know. 30

Q Please tell the Court the last gun you ordered. Why do you hesitate? A I am wondering if you mean the one that I bought in September, the tenth.

Q Of the present year? A No; I didn't buy any on September 10th of this present year.

Q I asked you about the last one; I want you to tell us the date of the last one you ordered. A I thought you meant— 40

*Lillian E. Pfender, cross.*

Q No, you didn't, and I didn't. A I did; I bought one the last week in October.

Q Of the present year? A Yes.

Q Bought it from the Hudson Sporting Goods Company? A I did.

Q Sent them a money order to pay for it, didn't you? A I did. \$28.

Q \$28.75, wasn't it? A \$28.

Q And how many guns have you ordered between September, 1926, and November, 1927? A September, 1926, and November, 1927?

Q Yes, how many others besides this one?

A I ordered one on September 10, 1926, and I ordered the other, I think it was about the 31st of October, 1927.

Q None in between? A No.

Q Mrs. Pfender, the deed to the Glen Ridge property and to the New York property are both in your name as well as Mr. Pfender's? A I think they are.

Q You never contributed anything towards them in any way, in the way of money? A No.

Q You knew, of course, that those deeds were in your name? A Yes.

Q Why, when you filed your affidavits in this court, asking for money, did you state that Mr. Pfender owned both those properties and not mention anything whatever as to your being as much owner as he? A Well, I had no financial means and I didn't think that I figured in it.

Q You knew that you figured in the property just as much as he did, didn't you? A No, I wasn't sure of that, and I haven't been convinced yet quite about it.

Q You mean to say your lawyer hasn't told you that your interest is as great in those properties as his? A I don't think he has put it

40

*Lillian E. Pfender, cross.*

that way. I think he realized that if—the way Mr. Pfender said to me, he said, "I fixed this—

Q Did none of your series of counsel advise you that you were as much the owner of those properties as Mr. Pfender? Answer the question yes or no. A I don't think they did.

Q Did you ask them? A I don't think there was any question about the property, that it ever came up; I don't recall it coming up.

Q You mean to say that you told your lawyers that got up these papers that Mr. Pfender alone owned this property, without inquiring whether you owned them? A They asked if it was entirely in Mr. Pfender's name; I said, "No, Mr. Pfender told me it was half in his name and half in mine."

Q You don't know how the lawyers after that came to say that it was entirely his, and not mentioning you? A I didn't have the money to keep it up, so I supposed I didn't figure in it much.

Q You didn't realize that although it was half your property, he was carrying all the expenses? A He always paid my expenses, and so I never had anything to pay.

Q You say that in March you were ill and neglected. Your sister was living close to you at the time? A Yes.

Q How close? A She was living in Montclair.

Q And did you phone to her or send for her to come to you? A No, I did not.

Q Your son was at that time in the vicinity, was he not? A My son was working every day in New York City.

Q Returning at night? A Yes, and returned late. His hours were very long; he left early in the morning and returned late at night.

40

*Lillian E. Pfender, cross.*

Q Your son's job wasn't a very important one? A He thought so.

Q He was practically supported during all of your married life by Mr. Pfender? A Up to the time he went into the service, he thought he was his son. He said, "I will bring him up  
10 as my son."

Q Did he support him almost entirely? A He did, as his own child. He said when he married me, that he was going to adopt him and bring him up as his own child, and Will always looked upon him as his own father, and thought he had the rights of a parent, and said so.

Q He loaned him a couple of thousand dollars just a little while before— A He did that to make him leave the house.

Q In 1926? A Yes, he made him sign an agreement that he will, and I haven't been able to find the agreement.

Q You didn't ask your son to stay and take care of you during this March illness? A Whenever he was there, he did.

Q You had a telephone right at hand? A Yes.

Q You telephoned for servants? A But I was too ill to do anything.

Q If you were well enough to go downstairs and get some food you would be well enough to take the telephone and telephone for a nurse, wouldn't you? A I didn't know where to get a nurse, and when you are ill you don't reason like you do when you are well.

Q The matter of the deeds that you say Mr. Pfender presented to you, did he ever present a deed to you to sign? A I cannot say it was a deed, but he brought these papers to me and  
40 said he wanted me to sign away my rights to the

*Lillian E. Pfender, cross.*

house, and I was lying in bed, and I didn't sit up so I could look at the papers.

Q So you never saw any deeds that he ever presented? A I don't know what they were; they were papers about the property.

Q Did he tell you that the expenses of the house, through the heavy taxes, and so forth, under the conditions of business, were very severe, and it would be advisable for you to move into a smaller place, and does not the letter offered today discuss that, a six or seven-room house? A Yes. That was at the time, but he contradicted himself afterwards, and he said that was all nonsense; he was just angry at the time. He said, "What I say when I am angry is different from when I am all right."  
10

Q You spoke of his mother being in the insane asylum. You did that to intimate that you think he is a little insane himself?  
20

Objected to.

Objection sustained.

Q What was the purpose of your testifying as to his mother being in an insane asylum? A I didn't testify to it.  
30

Mr. Lum: I withdraw that.

Q Mrs. Pfender, who notified or informed the Japanese servants that they should leave? A Mr. Pfender was very angry.

Q Who informed the Japanese servants they should leave? A He wanted them discharged, and told them himself at the table.

Q You are sure of that, are you? A Yes, he was standing in the dining-room and he told  
40

*Lillian E. Pfender, cross.*

them; I also went out and spoke to them. We both spoke to them; we were both there together.

Q Do you remember in the papers you mentioned that you told them to go, but didn't mention the fact that he told them to go? A He was right there with me at the time; he stood right alongside of me. They wouldn't take my orders, or do what I wanted them to do. I had even written to him about them, and if he would produce my letters, the whole thing would come out in the letters.

Q When did you first see a lawyer in connection with your affairs in 1926? A I went to them to make a will.

Q What date? A I should say it was around Labor Day.

20 Q 1926? A Yes.

Q You went to Mr. Goodell? A Yes.

Q And he made a will? A Yes.

Q And you discussed with him also your affairs at home, did you not? A I did.

Q And Mr. Pfender? A Yes.

Q And you were in touch with lawyers from that time continuously until this time? A I wouldn't say continuously.

30 Q There was a joint bank account, was there not, in September, which you had the right to sign? A There was no joint bank account.

Q A bank account in which you had money? A The money that I had I had saved up a little bit at a time for years.

Q There were several hundred dollars in that? A Yes.

40 Q From this \$10 a month which he gave you, you had saved several hundred? A I didn't save all that from that. He decided not to build the house in May and countermanded the order

*Lillian E. Pfender, cross.*

with Mr. Ross not to build, and then later he changed his mind.

Q How many hundred dollars did you have in the bank when you left Mr. Pfender? A When I left Mr. Pfender?

Q Yes, or when he left you. A I don't just remember. 10

Q Several hundred dollars? A I got it during the summer when he told me if I would go up to Westport he would give me \$100 a month, if I would go and superintend the building of this house.

Q The question is the amount, not how you got it. There were several hundred dollars? A I may have had five or six hundred dollars.

Q After Mr. Goodell came Mr. Simandl? A Yes. 20

Q And after him came Mr. Hedges? A Yes.

Q And after Mr. Hedges came Mr. Lane? A Yes.

Q Ever have any others in the meantime? A Do you mean that sarcastically?

Q Did you? A No, I didn't have any others.

Q This doctor in New York, Dr. Young, after you left the hospital that time, you never saw him again, did you? A I never did. 30

Q And he never treated you from that time on? A No.

Q And you say that there was no trouble at all in the taxicab? A No.

Q You were not angry? A No, I wasn't.

Q Mrs. Pfender, you never accused Mr. Pfender of meeting women in the park? A No.

Q And never charged to anybody the fact that he had been out all night with a woman? A Never. 40

*Lillian E. Pfender, cross.*

Q Never charged him with being unfaithful at any time? A No, never.

Q To any one? A Never in my life.

Q You didn't believe that he had been? A No.

10 Q And you remained very fond of him at all times up to the very end? A I was.

Q And the incident of this woman, that kept coming up during September continuously, didn't it? A It came up every night from the time he reached home.

Q You remember that if his train was late a few minutes, you immediately as soon as he came in charged that he had been out with "that woman?" A No.

Q Never did? A No.

20 Q Do you remember an incident in which the train was late and you said you had called up the station and they said the train wasn't late, and you said that he had been out with "that woman?" A No.

Q Nothing like that? A No, sir.

Q Do you mean to say to this court that your husband had ever forced you to sexual intercourse? A He did; he forced himself upon me many times.

30 Q Against your will? A Yes.

Q And why were you unwilling to have intercourse with him? A Because he had been ugly with me and insulting and used bad language to me.

Q And then after that he would force you against your will? A Yes.

40 Q And that continued right up to the very end? A He was agreeable sometimes; he would get over his anger; it didn't last all the time. He would get in a fearful rage.

*Lillian E. Pfender, re-direct.*

Q The last time he had intercourse, did he force you? A No.

Q And you have no recollection as to when the last time was? A I have; it was September 28.

*Re-direct examination by Mr. Blankenhorn.* 10

Q There was a time when you telephoned about a train to the depot? A Yes, once.

Q And what did you telephone for? A There had been a fearful storm and they said that the train—he telephoned that the trains were out of commission and that he wouldn't be able to get home that night.

Q And you did telephone? A I telephoned to find out if it was so; that was the only time, and they said the trains were all running on schedule time. 20

Q You told him that when he came home? A I did.

Q Did he tell you why he had telephoned? A Yes; he said, "I might as well admit it; I was out with Miss Hass."

Q This other revolver that you purchased was after Mr. Pfender had left you? A Yes.

Q Have you it now? A I have not. 30

Q Why did you buy that? A I bought it because of the actions of my gardener on the place. He had tried to intimidate me and threaten me; he had grabbed and insulted me at the back door and had made advances to me several times, that frightened me.

Q So you bought this revolver? A Yes. These advances were made in July, and from July along to October, and on the 19th of October he told me he had seen Mr. Pfender, and 40

*Raphael De Santis, direct.*

he said that Mr. Pfender was going to give him a thousand dollars, and he would tell all kinds of lies about me. He said, "Mr. Pfender asked me if I had seen your lawyer. I said, 'No, I saw one last year, but not this one.'"

10 Q Is that the only reason you got that revolver? A I bought it because he tried to grab me and insult me.

Q That is the only reason? A I was in terror of my life. He is a very strong man, and a brute.

*Re-cross examination by Mr. Lum.*

Q That gardener is still there on the place?  
A He is.

20 Q You haven't had that gun in some weeks, have you? A I haven't had it—

Q You brought that gardener to court here, either by subpoena or otherwise, every day this case has been on, haven't you? A Mr. Blankenhorn can tell you more about that than I can.

Mr. Blankenhorn: I subpoenaed him. We rest.

30

RAPHAEL DE SANTIS, sworn in rebuttal, for petitioner.

*Direct examination by Mr. Lum.*

Q You are the gardener on the Pfender place?  
A Yes.

Q Mrs. Pfender is living there at the house?  
A Yes.

40 Q You are on the place now? A Yes.

*Raphael De Santis, direct.*

Q And have been continuously for months, and have been for some time last past? A Yes.

Q Did you ever take hold of Mrs. Pfender or attempt to intimidate her or take advantage of her? A No.

Q Did you ever touch her at any time? A  
No, no, never. 10

Q Did she ever claim that you insulted her?  
A No.

Q Did you ever have any trouble with her? A  
No.

Q Raphael, did you have a gun in September of last year? A Yes.

Q Your own gun? A Yes.

Q Do you remember Mr. Pfender speaking to you about a gun? A Yes, one day; he come and got it. 20

Q By "he" you mean she? A She, and he told me, he said, "Raphael, I want your gun."

Q When you say "he," you are speaking—say Mr. and Mrs. Pfender? A Mrs. Pfender, he come and see me.

Mr. Lum: "He," that means man; "he" means man. You had better say "Mrs. Pfender."

The Court: We understand it. 30

A He come and say, he told me he want my gun. I say, "Mrs. Pfender, what do you want my gun for?" He say, "I want it." I said, "Mr. Pfender, he said so I give my gun." He said, "I don't want you to say anything to Mr. Pfender." I say, "I cannot give it to you; I want it myself. I need it myself." He say, "Well, never mind, we want a new one. Don't say anything to Mr. Pfender." I say, "Yes, ma'am, that is none of 40

*Raphael De Santis, direct.*

my business to say anything." Then the next day he come out again in the garden and he say, "Raphael, I got a gun. I buy a new one yesterday." I say, "How much you pay?" He say he pay twenty dollars and some change, which I don't remember. That is what he say.

10 Q Did you ever see the gun that Mrs. Pfender bought? A Yes, he let me see up in the house.

Q How much later did she give you that gun after she first told you she bought it? A The first time, two or three days before he go away to Atlantic City.

Q Two or three days before she went to Atlantic City? A Yes, the first time. He come to me in the morning, he want me to bring it back in the house. Then the last time he come in to see me, the last time he left the house for Atlantic City. He said, "Keep this gun but don't give it to anybody." Then when he was in Atlantic City, he write me a letter and say, "Raphael, you please—"

Mr. Blankenhorn: I object, unless the letter is here.

30 Q Have you got the letter? A He told me to burn it up. I have someone to read it to me, because I don't read English. He said, "Raphael, please make a box, put gun inside, bring it in the garden, dig a hole in the garden and bury it up in the ground," and then someone read the letter for me. He was to burn it up, no keep it, and I did it.

Q Do you remember her saying anything to you about your husband? A Yes.

40 Q What, if anything, did she say to you? A He come out in the garden and he say, "I wish

*Raphael De Santis, cross.*

Mr. Pfender he is dead, or someone kill him, because he fuss me in the house."

Q When did she say that to you? A About September, 1926.

*Cross examination by Mr. Blankenhorn.*

10 Q You wrote to Mrs. Pfender when she was in Atlantic City? A Yes, I did, but some little boy do it for me.

Q I show you letter dated November 28, 1927, and ask you if you didn't send that letter to her?

A Who send it?

Q You. A I did; I say—

Mr. Lum: I object.

20 The Court: It can only be evidential if it is on contradiction of the testimony unless brought to the attention of the petitioner. As the matter stands, I will sustain the objection.

Mr. Blankenhorn: May I have it marked for identification?

The Court: Yes; you may offer it in evidence if you show it is pertinent.

30 The Witness: The little boy write for me; I don't know.

Q You told the little boy what to write for you? A I told him something; sometimes he make a mistake; I don't know.

Q You think he wrote something on his own initiative? A Maybe.

40 Q You knew there had been a great deal of trouble between Mr. Pfender and his wife, didn't you? A I don't know much, because I work outside.

*Raphael De Santis, cross.*

Q You knew that the door to the bedroom that Mrs. Pfender occupied had been broken down three or four times, didn't you? A I never saw Mr. Pfender break the door.

Q I didn't ask you whether you saw Mr. Pfender break the door; I said you knew that the door had been broken? A The nails got loose and I put some more nail in.

Q You nailed it up? A Yes, I did.

Q Four times? A No.

Q How many? A Two times.

Q Two times in September? A No, one time in September.

Q What year? A 1926.

Q That is the year that Mr. Pfender left? A Yes.

Q That is the year he left? A Yes—no, he was home. Mr. Pfender was home; he wasn't away.

Q When did he leave? A October 1st or 2nd.

Q 1926? A 1926.

Q When did you go to Europe? A The 11th of January, 1927.

Q And when did you come back? A The 1st of May, 1927.

Q Is it your son that wrote these letters? A No, a little boy.

Q What little boy? A Some little boy, born in this country. He is an Italian. I have no son here; I have on the other side.

Q Didn't you say this to Mrs. Pfender, in the letter to her, or didn't you instruct this boy to write on November 1, 1926: "Dear Mrs. Pfender, last Saturday Mr. Pfender came over to see Mrs. Conklin and he told her that in case you came home she should call him up right away, and I was downstairs and I heard him talk-

*Raphael De Santis, cross.*

ing to her. Mrs. Pfender was not come home." Did you tell him to say that? A I don't remember, but maybe I say; I don't know.

Q Did you tell him to say that? A What I told someone I don't know.

Q And did you say this to Mrs. Pfender: "Mr. Pfender came over to see me and he asked me about the gun, so I told him that I wouldn't give it to nobody; maybe he will send me away for not giving it to him. He was awfully mad. I think Mrs. Conklin told him about it, because she was there when you gave it to me. Last Saturday I saw Mr. Pfender come in the kitchen and started in talking to Mrs. Conklin for about two hours." Did you say that to her? A I never write such a letter myself.

Q Did you tell the boy to write that to Mrs. Pfender? A Is my name on there? Yes.

Q Yes. A I don't remember.

Q Did Mr. Pfender come and ask you about the gun? A Yes, Mr. Pfender and Mr. Dougherty.

Q And they asked you to tell them when you got the gun? A Yes, I told him about it. I said, "He give it to me yesterday before he go away."

Q Then did you give the gun to Mr. Dougherty? A No, I give it to Mr. Pfender just a few days before I go to the other side—my home.

Q When you came back you went back to work for Mrs. Pfender? A I worked in the same place, yes.

Q And Mr. Pfender pays you? A Mr. Pfender did pay me always.

Q Have you left your employ; have you left there, or working there yet? A I work there yet.

*Raphael De Santis, cross.*

Q Hasn't Mrs. Pfender always locked the door so you couldn't get in the house lately? A Yes.

Q When did she start doing that? A She start after the other day—after the 23rd and 24th, he locked every door; he take my key last week, so I couldn't get in the house to water the plants.

Q Wasn't she afraid of you? A It must be; I don't know.

Q That has been so ever since she had that gun, hasn't it? A Yes.

Q Who told you that she had bought that from the New York sporting goods store? A The gun?

Q Yes. A Mrs. Pfender told me.

Q You told that to Mr. Pfender? A No, I never did.

Q Didn't you tell Mr. Pfender? A No.

Q Whom did you tell that to? A Yes, I told him; I told Mr. Pfender.

Q You went and told Mr. Pfender that Mrs. Pfender had a gun; is that right? A Yes, I told him this.

Q You had been telling Mr. Pfender everything that was going on there at the house since the last hearing? A No, I told him some things.

Q Everything that he wanted to know, is that right? A He asked me.

Q Did you go and tell him voluntarily? A Mr. Pfender write me sometimes how is everything on the place?

Q So that you repaired this bedroom door once in 1926 and once a year before that? A I don't remember the first time.

Q There was a time sometime before September? A Sometime the strips are loose on both

*Helen Pfender, direct.*

sides. Maybe the heat make it loose, and I put on some more nails.

Q You did that?

The Court: Twice, he said.

10

HELEN PFENDER, sworn in rebuttal for petitioner.

*Direct examination by Mr. Lum.*

Q Miss Pfender, have you ever had any trouble with Mrs. Pfender, your sister-in-law? A Only on our short invited visits there at various times.

Q In December, 1924, do you remember being there at the house? A Yes.

Q Were you and your brother talking about her behind her back? A I don't remember a word.

Q Were you talking about her behind her back? A No.

Q Do you remember your brother using vile and profane language to her on that occasion? A I never heard such a thing from him.

Q Did you hear him break down any doors or use violence of any kind? A No; I heard noises that night.

Q Tell us what you did hear, if anything? A Well, it was around bedtime and Mrs. Pfender went up to her room, and Mr. Pfender tried to get in and she wouldn't let him, and he said, "I want to get in." He had no place to sleep; I was in the guest room and he was in his room, and he said to me, "Go back in the room and don't take any part," so I did. I heard a noise

40

*Helen Pfender, cross.*

and with that the servants came down, so I went out in the hall a moment, and two Jap servants, and I told them to go back, take no part in it whatever. They wanted to defend him.

10 Q Why do you say "defend him"? What was going on? A They heard this noise, and they heard talking; I don't know what was said in the room.

Q Who was doing the talking, Mr. or Mrs. Pfender? A She was doing the talking, but I didn't know what was said.

Q Was she angry or not? A Yes, seemed to be.

Q Very angry? A Yes.

Q Did you hear anything else? A No.

20 *Cross examination by Mr. Blankenhorn.*

Q Mrs. Pfender had gone into her room and was talking there behind the closed door? A Yes.

Q What defense would Mr. Pfender require?

The Court: You said a moment ago that the Japs wanted to defend him. Mr. Blankenhorn wants to know—

30 The Witness: They heard him say that he wanted to get in the room, and she wouldn't let him.

Q Did you see him break down the door? A No.

Q You know the door was broken down? A I do.

Q That was in 1925? A 1924.

40 Q You have been to the house since then? A To one or two meals, but not to stay.

*Helen Pfender, cross.*

Q You were there at Christmas in 1925, weren't you? A For Christmas dinner in the evening; I went there for a short time.

10 Q Mrs. Pfender had simply gotten up, there had been no quarrel, there had been no words between you and her, or between Mr. Pfender and her; she had just gone up to her room and locked the door? A I don't know; there was friction; I don't know what was going on; I didn't try to find out.

Q Didn't you hear them talking? A I did not; I never tried to hear what was said.

Q Didn't she say that you were talking behind her back? A She said so, but it is a mistake; I was not.

20 Q Isn't that what caused the quarrel? That is to say, didn't she come into the room and say— A I don't remember her saying it.

Q Didn't she say that if you have anything to say, say it to my face? A I don't remember one word of it.

Q Then there was no quarrel at all? A No, not with me.

Q There were other bedrooms in that house, weren't there? A They were all occupied, yes.

30 Q Just one guest room? A Yes.

Q And no other bedrooms? A Not furnished, except the one the boy had—Will.

Q Was he there? A Yes.

Q You are sure that he was there? A Of course.

40 Q Did he come out and see the door broken down? A I don't know where he was just then, but we had all been together that afternoon to a matinee, and I had gone on ahead with Will. They came later.

*William E. Reeves, direct.*

Q You say Mr. and Mrs. Pfender came later?

A Yes; I don't know whether they were together or not; I think not, because she was ahead of us at the matinee, and my brother came in later; I don't know whether they met; I don't know anything about that.

10

---

WILLIAM E. REEVES, sworn in rebuttal for petitioner.

*Direct examination by Mr. Lum.*

Q This is your handwriting, that envelope and the letter (witness shown letter and envelope)?

20 A Yes, that is mine.

Q You wrote this letter to Mr. Dougherty?

A Yes.

Mr. Lum: I offer it in evidence.

(Marked Exhibit C. 17.)

Q About the time it bears date and was mailed—it seems to be November 22, 1926? A That is right.

30

Q And in that letter you remember making the statement—

Mr. Blankenhorn: I object to any statement made in this letter by this witness, to any person.

The Court: I don't know who the witness is nor what the purpose is.

Mr. Lum: The son of the defendant, brought up as a son in the family.

40

*William E. Reeves, direct.*

Q The question is, did you in this letter write to Mr. Dougherty—

The Court: Don't read the letter. How can it be evidential unless it was brought to the attention of the defendant herself?

10

Q Did you discuss this letter with your mother? A No, I wrote that letter of my own accord.

Q Didn't you speak of it to your mother? A No.

Q She didn't know of it? A Not that I know of.

Q Was there any other reason why you threatened to shoot—

Mr. Blankenhorn: I object.

20

The Court: Strike it out.

Q Did you ever talk to your mother about shooting Mr. Pfender? A Never did in my life.

Q Did she ever speak to you about it? A No, she never said such a thing.

Q How did you come to gratuitously and voluntarily threaten to shoot him?

Mr. Blankenhorn: I object.

30

The Court: Strike it out; there is no evidence that he did.

40

*Carl D. Pfender, direct—cross.*

CARL D. PFENDER, recalled in rebuttal.

*Direct examination by Mr. Lum.*

Q Mr. Pfender, after you had information of your wife's threat to shoot you, did you ever have  
10 intercourse with her? A Positively not.

Q Up until the condition became unbearable, did you continue your relations with her? A Yes.

Q And that was up to about what time? A I should say between Labor Day and the middle of September.

Q And up to that time had you heard of her threats to shoot you, or had she told you—

20 Mr. Blankenhorn: What year?

Mr. Lum: 1926.

Q —or had she told you of standing outside your room threatening to shoot you? A No.

Q After she told you that did you ever live with her again as her husband? A No.

Q Did you at any time ever force your wife to have intercourse with you? A Absolutely no.

30 Q In September, 1926, did you on an occasion when the train was late, tell your wife that you had been out with any woman? A I absolutely did not. She accused me of it, and I absolutely denied it. The facts were exactly as I stated them to her.

*Cross examination by Mr. Blankenhorn.*

40 Q Mr. Pfender, the only person who ever told you of a threat on your wife's part to kill you was Mr. Dougherty, is that correct? A No. I

*Carl D. Pfender, cross.*

believe Mrs. Conklin told me the same story; I am not positively clear of that.

Q I think you should be clear, Mr. Pfender, if you will try to recall, and state whether or not Mrs. Conklin did tell you. A Mrs. Conklin made statements that she wished that I was dead; wished that someone would shoot me; that I would be run over by an automobile or a train. 10

Q And when was that? A That was some-time prior to the time I left.

Q How long before? A I should say it was just after Labor Day.

Q In the early part of September? A Yes, sometime after Labor Day; I say I don't know whether—

Q You left at the last of September, didn't you? A Yes; it must have been sometime during September. 20

Q How long prior to the time you left? A I cannot state how long it was.

Q When was it Mr. Dougherty told you? A It was the time— I cannot recall the dates; it was the time after which I had no further relations with Mrs. Pfender—sexual relations. I cannot tell you the date. I had no reason to recall dates; I was simply trying to straighten out my affairs. 30

Q That is as near as you can come to fixing the time when you were first told that she was going to kill you? A It was sometime between Labor Day and the time I ceased relations with her; I cannot tell you the date.

Q But you told me at the last hearing that you had had relations with her in September? A Yes.

Q This last time you went into the room by force, that is breaking open the door, or what- 40

*Carl D. Pfender, cross.*

ever it was that happened, you slept in the room, didn't you? A No, not that I recall.

Q Where did you sleep? A I slept in the other room.

Q In the porch, just outside of Mrs. Pfender's room? A Yes, probably. 10

Q The only entrance to the porch was through Mrs. Pfender's room? A Yes.

Q And you were still suffering from loss of sleep, were you not; that is, inability to sleep? A I was. I was constantly annoyed one way or another by my wife's actions.

Q You walked up and down in the room, did you? A No, I was glad enough to have been able to sleep, if I could have had the opportunity and be left alone. It was a constant nagging at the time. 20

Q She didn't nag you when you were sleeping with the doors roped in the other room? A When I slept in there with the doors roped was after I had learned that she had revolvers in the house, and that she had threatened to shoot me.

Q That was in September then? A It was sometime during September.

Q And have you discussed this testimony and this point with anyone since the last hearing? A No, I have not; I have had no occasion to. 30

Q Didn't you lie down on the bed with Mrs. Pfender frequently as late as September, 1926? A Not to the best of my recollection.

Q And try to sleep? A No.

Q And try to calm her down? A I did during September, but not as late in the month as that. We went to Westport on Labor Day and I tried my best right along— 40

*Carl D. Pfender, cross.*

Q You went to Westport after the 7th of August, 1926? A Yes.

Q With her? A Yes; I tried my best up to the last to smooth things out and do everything I could.

Q When they told you that she had threatened to shoot you, did you ask her about it? A No; of course, I didn't. 10

Q Why not? A Why should I?

Q To find out if it was true. A Why should I believe her over someone else?

Q You would believe Mrs. Conklin, the servant— A I would believe Mr. Dougherty or Mrs. Conklin, yes.

Q You would believe Mrs. Conklin, the servant in the house, sooner than the woman you had been married to for thirty years? 20

Mr. Lum: I object to that.

The Court: There is no such testimony. I will permit the question, if you want to ask it, but it doesn't mean a thing, because the servant did not tell him, on his own testimony, that his wife had attempted or had said that she wanted to kill him. There is no use of trying to put words in his mouth.

Mr. Blankenhorn: I didn't intend to. I will withdraw the question. I understood he had testified to that. 30

The Court: He said that she had told her that she hoped that he would be run over by an automobile or be hit with a train or somebody would kill him, but not that she herself intended to kill him or wanted to kill him.

Mr. Blankenhorn: I beg your Honor's pardon; I didn't so understand it. 40

*Carl D. Pfender, cross.*

Q Then the only person who told you of a threat on the part of your wife to kill you was Mr. Dougherty? A Possibly the doctor had said that he had some such conversation. I cannot positively say, but it would be enough if Mr. Dougherty told me that.

10 Q But in any event you did not ask your wife? A I did not.

Mr. Blankenhorn: I wish to offer in evidence the reports that I had marked for identification.

Mr. Lum: No objection.

The Court: They will be given the same numbers.

20 Mr. Blankenhorn: I think there is a photograph, and possibly one or two other things that have been marked for identification; I would like to offer those.

Mr. Lum: No objection.

30 The Court: You may present any argument in a brief; I will not dispose of it now, because I have not read or examined any of the exhibits. If there were no exhibits in this case which I had to examine, I would be prepared to dispose of it immediately. I think in fairness to all parties, that I should examine those exhibits.

40

*Exhibits.*

(Letter.)

**Exhibit D. 2, Identification.**

May —  
#1

Lillian

10

In your note of May 22nd you state that "all this trouble might have been avoided if you had given me the private allowance of \$100 a month that you asked for last Sunday." If that were all that was wrong in the situation it would be very easy to remedy, for after all what is \$100 a month to the thousands of dollars a year I have spent each for years and gotten nothing but work and worry and no happiness out of the

#2

20

home.

It is about time you realized that on your health depends your happiness and mine too. I have been at you for several years to take treatments and get yourself well before it was too late but you persist in neglecting yourself to try to keep this big house going, and you have not been successful. After a hard trying day at business I have come home night after night with dread and foreboding of trouble as I unlatched the door

30

#3

and left the next morning with a comparatively light heart as I closed the door of this cursed house and left the troubles behind for a few hours. It is cursed just as Mrs. F. said, there is no doubt about it.

Now you still persist in keeping it and refuse to sell, and in so doing you are making sure of losing any chance of happiness that is left. I

40

*Exhibits.*

deny that I have been unreasonable and have not given you time to secure help if they can be had. The house work could have been left

#4

10 for two or three days at a time if necessary and the trip to the city would not have been any harder for you than the care of this big house.

You seem to think that you are the only one who has nerves, but you seem to forget that I am at a nervous tention all day long at the store and then have to come home and live with nervous wrecks, and have to listen to all the household troubles usually even before I have had a chance

#5

20 to get my dinner.

Yes I have changed and I have had good cause to change and I feel as if I had aged ten years in the last year. If your home and your own stubborn ways mean more to you than any thing else in life, keep right on as you are going.

30 I will not do anything in the house, pay the bills or have anything to do with the running and management of the place inside or outside any more than you have to do in my business in N. Y. There is enough there to keep me occupied without any other cares and worries.

Regarding Westport, if you want to try it out for a season in the cottage that I have paid the rent for and see how you like it, being alone during the week from Sunday night to Saturday morning, at the end of the season if it is a success I will then consider building a simple comfortable comparatively inexpensive bungalow or cottage for summer use.

40

*Exhibits.*

I will not however under any consider go ahead this season with a building of any kind in Westport. I will have to have your assurance after a full seasons trial that you will occupy it after it is built.

10 I will have to know not later than Sunday night what your decision is for if you will not occupy the cottage I must notify Will at once, as it may not be too late for him to rent it to someone else and the girl will also have to be notified so that I will not have to throw away any more money on Westport.

20 It has come to the point now where you will have to decide what is to be done. I cannot and will not continue to live the way I have for a long time. You seem to care more for your home, your garden and your pets than you do for me or my comfort and happiness and if this is the case, the sooner we settle matters the better. There is as much to be said on my side as on yours. You have always wanted to travel and see the world and it is impossible for me to get away for any length of time. It is not a case of my throwing you on the world without means to live and be comfortable. This home represents an actual cash investment of \$90,000 at the least and the furniture at least \$40,000 and if it comes to a break you would have an income of 4 to 5,000 from the proceeds of the sale and I would try to make a settlement that would assure you an income of at least \$6,000 a year or \$500 a month which would make you independent for life.

40 If we sell the house, we could store furniture and you could go to Cal. or travel were you wished for a while and get a good rest or take treatments and recover your health. Then later

*Exhibits.*

we could try an apartment for a time and if not satisfactory, we could consider a small house of 6 or 7 rooms such as all people both rich & poor are coming to. You know it is the only sensible thing to do to sell this big place which has gotten on my nerves so that I cannot stand it. It will probably take a year or more to sell it, and now is the time to start.

If you insist in keeping it and I allow you \$1,000 a month, you will have to pay all the running expenses of the house, taxes coal light gas water provisions repairs replacements, household supplies furnishings etc and all the help both inside & outside hire and fire the help and keep the place running in a proper manner so that there is some pleasure comfort and happiness to be gotten out of it. You pay for clothes—and all other expenses yourself.

**Exhibit D. 2.**

(Envelope.)

Addressed to

Mrs. C. D. Pfender  
Westport

New York.

Essex Co.

Dated June 29, 1926.

(Letter.)

June 29—1926

Dear Lilly,

I could not find the kind of dust mop that you wanted at Wanamakers or McCreery so sent the best I could get from McCreerys. About the glass straws they come in clear glass stems with

*Exhibits.*

Light Blue, Dark blue and red tops, the tops come in ball shape, strawberry or small spoon. They also come with the stems and tops in the same colors, Light Blue, Dark Blue and Red. Please let me know what style, shape & color you prefer.

About the wicker trays—square trays are 2.50 Round trays with places for the six glasses & the pitcher in the centre are \$8.00. The one I preferred was round with a handle like a basket, and was made with places for the six glasses at one side and the pitcher just set in the centre. It was easy to get at the pitcher in this style & very hard to get it out in the other style. It was finished in white enamel and I thought it was the best and most suitable in shape & color of the lot. Shall I order it.

I left all my auto keys in the lock of the car at Mr. Lotts garage. You might telephone him so he take good care not to lose them. I will not need them until I get to Westport next Saturday. I expect to reach the house early, that is about 5 to 5:30 Standard time (Westport time) so I can get some bait & get my engine started as early in the day as possible. How can I get in without disturbing you.

I got home at 6:20 last night and Mrs. C had a nice dinner ready, and then I dressed & rode from about 7:30 to 9 o'clock. Tonight I may go over to see Helen as she goes away next Tuesday.

We have had delightful weather, but quite warm. Hope you are rested and enjoying yourself to the utmost. It seems strange to see polly's empty cage and no canaries in the porch or cats around. The old lady picked some roses & put them in the hall, dining room & living room.

*Exhibits.*

I told Raffael to send to-morrow some peas, spinach & lettuce, so be on the lookout for them at the post office.

Good bye dear, with lots of love from Carl.

10

**Exhibit D. 3.**

(Envelope)

Addressed to

Mrs. C D Pfender  
Westport

New York

Essex Co

Dated June 28, 1926.

20

(Letter)

Dear Lilly,

Arrived safely, had a rushing day at biz and have to hurry to get my train so I can get a ride after dinner.

Will you let me know about the Battery as per enclosed slip

Hope you have gotten rested and will enjoy yourself.

30

Love from

Carl

40

*Exhibits.***Exhibit D. 4.**

(Envelope)

Addressed to

Mrs. C. D. Pfender  
Westport

New York

10

On Lake Champlain.

Dated July 15, 1926.

(Letter)

7-15-1926

9.40 A. M.

Dear Lilly,

Your letter recd also glasses— Thanks for sending them. Glad to learn from your letter that things are better and hope they will go all right from now on.

20

How is your rib? Hope it has stopped bothering you. Keep up the heat treatments. Will try to get your little dress from the cleaners and bring it up Sat A. M. Have had some rain, yesterday was cold today cool and cloudy. Rained last night but got in a horse-back ride between drops. Pruse is fine and as sweet & gentle as ever. Will mail at once so you get it Friday AM. Lot of love

30

from Carl.

40

*Exhibits.***Exhibit D. 5.**

(Envelope)

Addressed to  
 Mrs C D Pfender  
 Westport  
 New York.  
 Essex Co.  
 Dated June 30, 1926.

10

Dear Lilly, 6/30/26  
 Please ask Mr Richards to deliver the battery to  
 the cottage so it is there when I get to Westport  
 Sat A. M.

I will look into the radio for the Mountains  
 I will try to find the velvet flowers & send or  
 bring them to you.

20

Glad you like the cottage etc—  
 Better get your sister to go to Dr Harris 2 doors  
 below the cottage & be examined dont take a  
 chance if she is not well.

Lots of love—In haste Carl

30

40

*Exhibits.***Exhibit D. 6.**

(Envelope)

Addressed to  
 Mrs. C. D. Pfender  
 Westport  
 New York.

10

Dated July 6/26

(Letter)

July 6—1926.

Dear Lilly,

I reached the station without getting wet and  
 had a fairly comfortable trip to N. Y. There  
 were so many Sections and so many Cars on  
 each section that we were almost an hour late  
 in getting to the station. N Y City & Brooklyn  
 are now tied up with a car & subway strike to  
 make matters worse in handling the crowds.  
 It rained a little here early today and has been  
 rather heavy & close this P. M. I phoned Me-  
 Creery's and the only thing they have in a  
 white round tray is one with places for the  
 glasses in a semicircle and the pitcher sets in the  
 centre of the semi-circle (diagram) or they have  
 this shaped tray in white (diagram) with a  
 handle.

20

What do you want me to do. Shall I try to get  
 a round tray like the one you have there in white  
 some where else

Please let me know at once.

Hope you will rest up and stop working all the  
 time and will be able to get some one to cook &  
 clean for you

Good bye dear with love from

Carl

30

40

*Exhibits.***Exhibit D. 7.**

(Envelope)

Addressed to

Mrs. C. D. Pfender

Westport

New York.

10

Essex Co.

Dated July 7, 1926.

(Letter)

July 7th 1926

Dear Lilly,

I found a tray at Wanamakers at \$7.50 that had places for 6 glasses around the outside of the tray and a place for pitcher in centre in white enamel, glass bottom—creton under the glass. looks like this (diagram) Handle comes up from centre, not edges, as in one you have and look nice and the handle I think is stronger places in the centre It is better than one at McCreerys that I described yesterday in my letter. Let me know which you want and the McCreery tray can go back & Wanamakers can be sent up.

20

I will try to send your big shade hat up to you in a box you have the trimming I think you said.

30

I enclose a circular about a radio that lists at Wanamakers for \$350. It is complete & the most up to date on the market. No batteries, just plug into an electric light socket. Has six tubes & is very powerful. Needs an outside aerial which could easily be put up by local electrician It requires alternating current Not direct current Please ask Mr Mallory the electrician if they have alternating current in Westport Mr

40

*Exhibits.*

Mallory is the electrician & has our Contract. Just telephone & ask for his house & he can tell you in a minute if it is Alternating Current in Westport. I can get the Set for \$298 complete through one of our salesmen It is very neat looking as you can see from the enclosed picture Has Western Electric Horn & is the last word in radios.

10

I sent up 3 lbs of Sun flower seed today from Wanamakers for Polly. Nice day today but warm on the street.

Good bye dear with lots of love & kisses from  
Carl

GAROD RADIO FOLDER ENCLOSED.

**Exhibit D. 8.**

20

(Envelope)

Addressed to

Mrs. C. D. Pfender

Westport

New York

On Lake Champlain.

Dated July 12/26

(Letter)

30

7/12/26

Dear Lilly

I left my glasses either on the bureau or in one of the pockets of My vest coat or trousers. The coat & vest hang under the curtain near the Steamer trunk & the trousers on the opposite side near the cats dishes. Please mail them to me. Wonderful morning clear & cool. Hope you rested well.

In haste love from

40

Carl

*Exhibits.***Exhibit D. 9.**

(Envelope)

Addressed to

Mrs. C. D. Pfender  
Westport

10

New York

On Lake Champlain.

Dated July 12/26

Dear Lilly,

I ordered 100 napkins (paper) to be sent up from Wanamakers (90c for a 100)

20

About a radio—I find that I can get one that has been very well recommended to me by two of the salesmen at the Store, who have them. I can get this six tube Set for \$113 complete (except aerial which will have to be put up outside by local electrician) plus \$28 for a 25 Cycle Charger. What do you say about my ordering one of them to be sent up.

Cool & pleasant here today— Hope it has been the same there.

Must close with love from

Carl

7/12/26.

30

40

*Exhibits.***Exhibit D. 10.**

(Envelope)

Addressed to

Mrs. C. D. Pfender  
Westport

10

New York.

Dated July 13, 1926.

(Letter)

Mr Richards May know of some one whom you can get. Ask him & tell him what you said to Margaret so he knows the truth if he hears about it.

July 13—1926

20

Dear Lilly,

Yours of the 12th recd. I am awfully sorry you are having so much trouble with the help etc. It is most unfortunate that we took that dirty little B— Margaret but what could you know about how things were going to turn out. Shall I speak to Mrs Conklin about coming up. I will try & keep the place dusted up and as clean as possible or do you want me to see Blanche Mack and see if she has no steady place & would like to come to you. I saw other colored people in town I will do anything I can to straighten out things if you will let me know what you want me to do.

30

Dont let any statements that your sister Makes about being injured in the auto accident or anything else she says worry you. If she makes any claims I have insurance to cover it, but dont let her know anything about it. After all my trouble with Ruth, getting the suit case & phoning her and asking her to let me know about her

40

*Exhibits.*

plans last week by Tuesday July 6th at the latest I have not heard a word from her. Of course it is all off anyway. Now I returned the suit case today & got credit for it Dont worry dear everything will come out all right. I hope you have used your heat treatment and are feeling much improved.

10 Goodbye with lots of love from

Carl

**Exhibit D. 10.**

(Envelope)

Addressed to  
20 Mrs. C. D. Pfender  
Westport  
New York.  
Essex Co.  
Dated July 26, 1926.

(Letter)

July 26—1926.

Dear Peaches,

30 I stopped at Lord & Taylors & returned the dress and ordered two white slips plain hem-stitched, silk size 40. to be sent direct to you. I then went to McCreery's and had them send a blue dress same color as the one I returned and a Wisteria or Orchid, both in the same design as the one in yellow that you kept. They did not have a white one so I had them send up another white silk dress at \$19.75 which I hope you will like. If, when I come up next week you need anything else or you write me in time I will try  
40 to get it for you. If any of the three dresses

*Exhibits.*

have to go back you might keep them and I will return them next Monday when I come back from the City, unless you return them by mail and insure them. I hope however they are just what you want, I thought that you would look very nice in them. They are all washable When you ordered the cake can from Wanamaker's did you give them the charge address in Glen Ridge as well as the Westport address. If not that might cause delay.

We had a nice brisk walk to the station last night, made it in about 22 minutes and could have made it in shorter time if necessary. Why dont you go to the circus that is to be in town this week also go to the movies to help pass the time. It must be delightful there today with the Sun shining on the lake & mountains. And the beautiful clear cool atmosphere. It is cool & pleasant here today and I hope it will last for a while as our line opens Monday and it is bigger than ever. I expect you will find it very interesting to watch the house progress from now on, as it will take shape quite quickly now & you can get a good idea how the completed building will look. Good bye dear with lots of love from

Carl.

30

40

*Exhibits.***Exhibit D. 12.**

(Envelope)

Mrs. C. D. Pfender  
Westport  
New York.

10

Essex Co.  
Dated July 19, 1926.

July 19—1926

Dear Lilly,

I ordered a cane with a rubber tip for you to be sent direct from Wanamaker's also tape—white sewing silk & orchid sewing silk. If not the right shade I will change it next week. I enclose copy of letter I wrote to Miss McCarthy.

20

Also to Mr Dudley about a survey & map of cutting lot. I had a very good sleep last night on the train. It was cool & pleasant. Had extra blanket toward morning. Today has been clear & fine.

Will you please call up Mr. Adams tomorrow & follow him up on the lumber for the house Mr Ross also wrote him about it. Hope you are feeling better after a good nights rest in the delightfully cool mountain air.

30

Hope to be able to take a ride tonight if not too tired after dinner.

Good bye with lots of love from

Carl.

40

*Exhibits.*

July 19, 1926.

Mr. Robert B. Dudley,  
Elizabethtown, N. Y.

My dear Mr. Dudley:—

As I recall it, the surveyor who surveyed the lot for Miss McCarthy was to survey the Cutting lot and stake it out and give me a map of the two properties. When I was looking at the lot yesterday, I did not discover any stakes in the Cutting lot. If this has not been done, will you please speak to the surveyor about it.

10

Very truly yours,

CDP,AD

July 19, 1926.

20

Miss M. J. McCarthy,  
Beech Hill Inn,  
Westport, N. Y.

My dear Miss McCarthy:—

In reply to yours of July 15th., it would be perfectly satisfactory for you to move the boat house next winter on the ice.

When I was up there this week end, I noticed how very plainly the dead poplars near my south line showed against the sky, with all the other trees green. I was wondering whether you were going to have your men cut these down for fire wood, I think you will agree with me that it would greatly improve your property as well as mine. Everything else looks so well kept and green that it makes these dead trees stand out very plainly.

30

Yours truly,

DICT.C.D.PFENDER.

40

*Exhibits.***Exhibit D. 13.**

(Envelope.)

Addressed to

Mrs. C. D. Pfender  
Westport  
New York

10

Dated July 20, 1926.

(Letter.)

7/20/26

Dear Lilly.

I told Raffael not to send any more big packages of vegetables, but to make them not more than half as large as before. I also did up the cloths bag that I found in my closet and asked him to send it also my mail.

20

I recd. a reply to my letter to the lumber brokers in Plattsburg but nothing definite, only that they were tracing the car & hoped it would be delivered by this time. Have you phoned Mr. Adams about it?

It has been quite warm today and rather sultry. I suppose it has been fine & cool in the mountains. No letter recd today. Hope you have rested & taken care of yourself and used your heater (Thermolite) that the doctor so kindly lent you. It was very nice of him.

30

Good bye dear with lots of love from Carl.

40

*Exhibits.***Exhibit D. 14.**

(Envelope.)

Addressed to

Mrs. C. D. Pfender  
Westport  
New York.

10

Essex Co.

Dated July 21, 1926.

(Letter.)

July 21—1926

Dear Peaches,

Your letter recd this A. M. It is surely hot here today and I am glad it is no worse than 88 in Westport, for I know that you can keep cool on one of the porches and the nights will be cool anyway. Why dont you go to the movies some night. It will help pass the time. Polly must be a lot of company to you anyway. He is certainly entertaining. Mr. Ross has gotten at Giroux & Adams by letter and I hope things will soon start to move. How delightful & cool it will be in the new house with windows & doors all around and way up on the mountainside out in the open.

20

Good bye dearest With lots of love from Carl.  
You forgot to sign your letter.

30

40

*Exhibits.***Exhibit D. 15.**

(Envelope.)

Mrs. C. D. Pfender  
Westport  
New York

10

Essex Co.  
Dated July 22, 1926.

(Letter.)

July 22—1926 10:50 A. M.

Dear Peaches,

Glad to know lumber has come Mr. Ross also  
got word and expects to be up this week end. I  
will invite him to stay with us if it is O. K. for  
you, as I suppose it will be.

20

You are fortunate to have a delightful breeze  
as you say. Here what breeze we have is hot  
and heavy.

I will go out this Noon to McCreery's & Lord  
& Taylors & try to get you 2 or 3 dresses for  
everyday wear—voile or linen or tub silk size 40.  
Dont know what luck I will have but I will try it  
anyway. I will mail this at once in hopes that  
you will get it before I arrive Sat. A. M.

30

Good bye dear with lot of love from Carl.

40

*Exhibits.***Exhibit D. 17.**

(Envelope.)

Addressed to  
Mrs. C. D. Pfender  
Westport  
New York.

10

Essex Co.  
Dated July 28, 1926.

(Letter.)

July 28—1926.

Dear Peaches,

Your letter recd. I immediately called Mr.  
Ross on phone and read your letter to him & he  
said he understood what you wanted & would  
write G. & Adams tonight. I also sent him your  
little sketches by boy. The two windows are  
already framed and sheathed on the outside and  
he suggested leaving them as they were for the  
present, as he thought they would not be objec-  
tionable as they are. The partition will not be  
put up, so that you will have one big closet in-  
stead of two smaller ones and if you want one  
window instead of two it can be changed and  
one large window made, the next time he goes up.  
His objection was that your delivery people would  
pass through your closet instead of having it  
private, but I said I did not think that would  
matter. He will leave the door nearest the front  
just as you indicated on your drawing. He has  
also sent the builder's a sketch of the change &  
indicated the extra dresser in the kitchen that  
you wanted. Now is the time to make changes  
not later I will measure our ice box at home.  
I sent up the Brown blanket cover by mail.

20

30

40

*Exhibits.*

Were the dresses O K? I have plenty of covers at home.

10 Sorry you were upset in your tummy but you must be careful not to overeat, especially when it is hot. Our grind has started in earnest. 2 mill men today, some tomorrow line opens next week, so I will be busy for some weeks to come. Hope I have answered all your questions & gotten all the changes you wanted as you wanted them. I will try to bring up a set of plans for you to have.

Good bye dear with lots of love & kisses from  
Carl.

**Exhibit D. 18.**

20

(Envelope.)

Addressed to

Mrs. C. D. Pfender  
Westport  
New York

Essex Co.

Dated Aug. 2, 1926.

(Letter.)

30

Aug 2—1926

My dear little Wifey,

40 This has been some day—hot heavy & humid. Stopped at L & T & retd slips Could get no others in your size & kind so went to McCreery's & got a nice silk one at \$7.95 & 2 Philipino's at 2.95 but had to get both in the same design. Only ones they had except cheap ones at \$1.95. Retd blue dresses Ordered 3 lbs sunflower seeds 1 lb Eng. Canary seed & 1 lb reg canary seed sent from Wanamakers. Your card of the 29th reed

*Exhibits.*

this A. M. & will try to get you two short white nainsook petticoats & a pair of white silk gloves tomorrow. You said nothing about these when I was in Westport.

10 I met Mr. Ross at Jackson's mantle store this P. M. & we selected the mantles you wanted. \$155. for L. R. \$135 for D R and \$88 for bedroom. Saw the plain mantles and they were very well proportioned and I think you will like them. The carved wood (not composition) ornaments will be applied as you wanted them. They will be a great addition to the rooms.

20 I tried to remember all the things I had to do but as you probably discovered I left all my memos and little books & bills somewhere at the house, so will you please mail them to me at once if you have not already done so. I am trying to finish this letter before I leave to go home with Charlie for the night & so you receive it by tomorrow night if poss. I have just mailed a money order for \$50 to your sister. Do you think a portable phonograph at \$35 or \$50 would be all right or one with a regular built in sound box & a cover over it at \$75. which is not portable. The \$75 one is somewhat like our small one that we gave away during the War only with a cover & a built in sound box or horn with slats in front. It comes in walnut mahogany or oak I believe. The portable ones come in a case & close up & can be carried with a handle.

30 I hated to leave you last night and left just time enough to make the train by walking fast. If the train had been on time I would have had about 3 minutes to spare, but it was 15 minutes late. I did my shopping before going to the store & hope the slips will be O K if not I will change them for you. I got the best quality silk slip

40

*Exhibits.*

they had. As I think of the designs for the electric fixtures I think they are very artistic and beautiful and will make the rooms very handsome & attractive. The lanterns are great & all so different in shape & design. We will have to take that matter up with Mr. Ross when he is up  
 10 this week end. Hope it has been pleasant & cool today & that you got a good rest last night out on your sleeping porch. It was fairly comfortable in the sleeper after the train started & I had to pull up the blanket after a while. No more news tonight. I will try to get a list of Victor records & mail up to you tomorrow & if possible pictures of the phonographs also. Make your selections of some records from the catalogue when it comes. Good bye Sweetheart.  
 20 With lots of love & hugs & kiss from your loving husband,  
 Carl.

**Exhibit D. 19.**

(Envelope.)

Addressed to  
 Mrs. C. D. Pfender  
 Westport  
 New York  
 30 Essex Co.  
 Dated Aug. 3, 1926.

(Letter.)

Aug 3—1926.

Dear Sweetheart,  
 It has been a corker here today hot as the dickens, but a breeze this P. M. that helps some. I sent a pair of white silk gloves \$1.50 size 7½  
 40 from Wanamakers today. Could not get the

*Exhibits.*

nainsook petticoats at Wanamaker's & did not have the time or energy to go uptown for them.

I enclose a circular showing one of the new phonographs at \$85. Also am sending under separate cover a large catalogue of records. They told me that the Victor people would have a newer model out in a month or two at \$95 that  
 10 would be better than the \$85 one, but this sounded very good & if you want it I will give it to you for your birthday.

Charlie & I went to the Country Club for Dinner last night & ate on the porch, from there we took a ride to get cool & stopped at the Ramapo Riding Club to see the ring etc. There wasn't a sole there, not even a groom about, but lots of horses in the stalls. We then went to a little  
 20 log cabin fishing club near Hohokus for a while and then home & to bed & were up at 6 A. M. shaved & had a bath & then drove in to N. Y. had breakfast at Mr. Child's Restaurant & to the store.

Hope it has been cool & pleasant at Westport and everything is going along all right. I will have to list & deliver the laundry & bring the clean wash home & sort it, see Prince & give him some carrots from the garden & try to sleep  
 30 out on the porch with all the windows open. Judge said it was terrible in Glen Ridge last night.

Good bye dearest for today. Will write again tomorrow. Line is open & will be busy from now on for some time. It always comes when it is hottest.

With lots of love & kisses from Carl.

*Exhibits.***Exhibit D. 20.**

E. M. Hawkes, M. D.  
11 East 48th St.  
New York

Sept 27, 1926.

10 Dear Dr Hauser—

Mrs Pfenders external genetical organs are normal. There is a history of removal of a tube for ectopic gestation but as far as palpation goes the internal organs also are normal.

From the examination I would say there should be no impairment of the sexual function and she says there is none.

Thank you for referring her

E M Hawks

20

**Exhibit D. 21.**

Dr. Arthur L. Holland  
30 East 40th Street  
New York  
September  
Twentyninth  
1 9 2 6

30 My dear Mrs. Pfender:

Regarding the results of the examinations two days ago, I have the following to report:

The head, neck, heart and lungs were normal in every respect.

The blood pressure was 144-88 and the pulse regular with the rate of 72.

Examination of the abdomen revealed nothing abnormal and there was no tenderness. All of the nerves seem to be intact and the muscular system seemed to be normal.

40

The weight was 138 pounds.

*Exhibits.*

Examination of the urine showed no abnormalities.

The blood hemoglobin was 88%, which was a normal figure. Blood chemical examinations made the 10th of May, 1926, were as follows: Uric acid, normal; blood sugar normal; non protein nitrogen, normal.

10

The examinations of the stomach and intestine in February 1925 showed nothing unusual under fluoroscopic Xray screen examination.

I feel entirely safe in concluding that your physical condition is satisfactory in every way.

Sincerely yours,

Louis A. Hauserg  
Associate.

Mrs. C. D. Pfender,  
364 Ridgewood Avenue,  
Glen Ridge, New Jersey.

20

**Exhibit C. 42.**

(Envelope)

Mrs. C. D. Pfender  
Westport on Lake Champlain  
Essex Co. New York

30

(Letter)

I have to get two and three qts of milk a day as your Son drinks so much is that all right?

Wednesday Night

Dear Mrs Pfender—I was intending to write—to you last Thursday night, but the lights went out and I waited a long time for them to come on— Was tired and went to bed—I was glad to get your nice letter and received the card yesterday I know it must be very pleasant and restfull

40

*Exhibits.*

there I was sorry to hear that you had fallen—  
 Hope you may be better by this time—Mr  
 Pfender said to me last night I think you  
 ought to go out and spend the day somewhere,  
 it will do you good and I will get my dinner in  
 N. Y. Now that was very kind of Him and I  
 10 think I will some day next week for the neice  
 I told you off an Husband are comeing to my  
 sister this Saturday. To be here a week I think I  
 will have them stay with me Sunday night if they  
 can— It was nice that Mr Pfender could be with  
 you for His Birthday—I wish you could tell me  
 of some thing that he likes. I realize that  
 there is such a sameness in my cooking—As He  
 does not eat Beef or Pork. It is hard even to  
 have a change—I am trying to do the best I can  
 20 with everything—your son is here most of the  
 time and it makes it very hard for me getting  
 the meals all at different times and try and  
 keep the other work all up—I work all of the  
 time seldome have a minute during the day—I  
 have made quite a lot of Jelly and Jam—Made a  
 little Red Ras—Jam yesterday had to to save  
 them. Last Saturday night my sister and  
 daughter and little Bittie came down brought  
 things for a picnic supper and ice cream. We  
 30 ate it in my nice little dining room— After my  
 sister phoned about it I asked the gardner if it  
 would be all right to eat it out where that seat  
 and little table is, as we would not eat until about  
 eight oclock and I did not think any one would  
 see us— He said no he was sure you would not  
 like it so I said it is all perfectly all right and  
 he said he did not want any one to even walk  
 around again excepting I could I asked him if my  
 sister had ever touched any thing he said no—  
 40 Well it made us feel very bad but I can assure

*Exhibits.*

you that no one will ever walk around again—  
 We had enjoyed it going down to the lily pond  
 and around up the garden walk had never steped  
 off a walk—I did love to see the things growing  
 in the garden, the only thing I ever did in dif-  
 ferent times I picked off one pea pod and ate  
 the peas brought the pod up and put it in the  
 10 garbage, and my sister said she did the same—  
 Never thinking it any harm—but we are never to  
 old to learn and I will try to know my place  
 hereafter—I hope you will tell me if I have done  
 anything wrong. It has been very hot here  
 yesterday and today— We had one of the worst  
 storms here last Sunday afternoon, it started  
 to get dark about five oclock, I went every  
 where and had every window closed I was alone  
 it thundered and lighteninged and rained and  
 20 hailed some for three hours—it seemed a long  
 time to me here alone but I wrote these long  
 letters Well I hope that your new house is grow-  
 ing fast—and that you may be able to enjoy it  
 many years with best wishes from

Mrs Conklin good night

Now please tell me any thing that you wish me  
 to do or not to do I shall not be offended I  
 would rather know what you think—

Thursday night

Dear Mrs Pfender—I thought you might like to  
 hear from me so am sending this by Mr P—  
 I am getting along fairly well—doing the best I  
 can I work nearly all of the time—havent been  
 farther than the Lily Pond once— Your son did  
 not come home until Saturday night has been  
 home for breakfast and have dinner at one nearly  
 every day, today just ate a light lunch and said  
 40

*Exhibits.*

he was going down in Jersey—I asked Mr. P—  
 if he was willing that my sister and daughter  
 come down and stay over the week end he said  
 yes your son picked the dish pan nearly full of  
 currants yesterday and he did not know how he  
 striped them off and it will be very hard to look  
 10 them over I told my sister, she said you leave  
 them right alone I will come down tomorrow and  
 make the jelly—it will be some work she was  
 pleased to come it would be like going to the  
 country for them and she said she would bring  
 some clams and celery and make clam chowder—  
 now every thing will be all right. Not one thing  
 will be disturbed or any furnishings taken do  
 not worry about any thing. I have made some  
 strawberry jam my way—am making a little  
 20 more— I hope that you are having a good rest  
 for you had so much to think off— A letter came  
 from one of my sisters in Virginia, the day you  
 left wanting me to come at once, she was sick  
 and one of the daughters wanted to come to  
 Columbia College for the summer school I wrote  
 her at once she has written me since she is better  
 and they found help and Helen came to N Y,  
 yesterday—I hope that you may be able to read  
 this. My pen is so poor—it is now after nine so  
 30 think I will say good night— Any thing you wish  
 me to do you can tell Mr Pfender Kindly  
 from Mrs. Conklin

*Exhibits.*

**Exhibit D. 36.**

No..... New York June 14th 1923  
 BANK OF THE MANHATTAN COMPANY 1-2  
 31 Union Square  
 Pay to Mrs. Carl D. Pfender or order 10  
 Two thousand dollars. \_\_\_\_\_Dollars  
 \$2000.00 Carl D. Pfender

**Exhibit D. 41.**

Hairdresser Bloomfield  
 2223 W Phone  
 Mrs John Lohse  
 2008-R 20  
 26 Clinton Road Glen Ridge N. J.  
 Dougherty 96 Bloomfield  
 Lace—Beads  
 Slip Pattern

## New Jersey Court of Errors and Appeals

*Between*

LILLIAN E. PFENDER,  
*Complainant-Appellant,*  
*and*  
CARL D. PFENDER,  
*Defendant-Respondent.*

*On Bill for  
Separate  
Maintenance.*

*On Petition  
by Husband  
for Divorce  
on Ground of  
Extreme  
Cruelty.*

*Between*

CARL D. PFENDER,  
*Petitioner-Respondent,*  
*and*  
LILLIAN E. PFENDER,  
*Defendant-Appellant.*

*Decree Dis-  
missing Bill  
of Wife and  
Decree Nisi  
on Husband's  
Petition for  
Divorce.*

*Heard Below  
Before  
BERRY, V.-C.*

*Appeal of  
Wife.*

### BRIEF FOR APPELLANT.

#### The Pleadings.

(Italics, etc., mine, except where otherwise noted.)

The bill was filed December 13, 1926, by Lillian E. Pfender, against her husband, Carl D. Pfender, charging actual abandonment as of October 1, 1926, and a failure to maintain her in a manner suitable to the station occupied by the

parties (p. 1). An answer was filed by the husband on July 15, 1927 (p. 8). That answer admitted that he had left on the 1st of October, 1926, but claimed that he did so because of the cruelty of the wife (pp. 8, 13).

On April 6, 1927, the husband filed his petition for divorce against the wife for the cause of extreme cruelty (p. 16). The wife answered May 5, 1927 (p. 22) denying the extreme cruelty with a counter-claim for divorce against the husband for extreme cruelty. The husband answered the counter-claim denying the alleged extreme cruelty (p. 45).

The two cases were consolidated for trial (p. 47) and came on for hearing before BERRY, V.-C., on November 23, 1927. The counter-claim of the wife for divorce was withdrawn but the statements therein contained as to the cruelty of the husband were permitted to remain as a part of the answer to the husband's petition.

The case was, therefore, heard upon the bill for maintenance of the wife, answer thereto and the petition of the husband for divorce on the ground of extreme cruelty and answer thereto.

The Vice-Chancellor filed his conclusions (p. 51) the result of which was that the wife's bill was dismissed and the husband's petition for divorce granted, and, thereupon, on January 10, 1928, a decree dismissing the wife's bill for separate maintenance and granting the husband's petition for divorce was filed (p. 48). From this decree this appeal was taken (Notice of Appeal, p. 56; Petition of Appeal, p. 57).

### The Petition of the Husband for Divorce.

It is important, I submit, in considering the testimony and the conclusions of the Vice-Chancellor, to have in mind the allegations which the husband made against his wife in the petition, to support many of which no evidence whatever was offered for the failure to sustain them gives color to his attitude of mind.

The husband charges in his petition, which was filed after the wife had filed a bill against him for separate maintenance, that "from the *beginning* of his married life, your petitioner has suffered from the violent and ungovernable temper of his wife" (par. 3); *immediately after the marriage* the wife showed a great dislike and bitterness to all of petitioner's relatives and friends so that "her *constant* nagging, fault-finding, haranguing and insulting directed toward petitioner and his relatives estranged them from him" (par. 4); in June of 1914, upon his return from a two-day fishing trip to Greenwood Lake he found his wife in a *very menacing rage*, and, upon his returning to the house after putting his car in the garage, found all the windows and doors locked to prevent his entering, and he was compelled to spend the night in the garage, and from that time "defendant *frequently locked your petitioner* out of his room and out of the house, with absolutely no reason whatsoever for so doing" (par. 5); in May of 1923, the wife became *incensed and uncontrollably angry* and *abusive* because her husband planned to go on a short fishing trip to Maine and she tore up petitioner's fishing licenses and only agreed to permit him to go after he promised to take her abroad upon his return, which he did (par. 6); in the spring of 1924, defendant's attitude and treatment *became aggravated*, and in May of

1924, in a taxi going to a ferryboat after an occasion on which the defendant had *without cause discharged and rudely insulted a doctor who had been attending her for a great many years*, she, without any cause or provocation whatever struck petitioner severely in the face with her fists (par. 7); during the spring and early summer of 1924, her treatment continued the same, and during a week-end spent by petitioner and defendant over the 4th of July at Westport, New York, she became *greatly enraged and violent* toward petitioner and insisted that he leave the house immediately with the servants, and she *compelled* him to leave that very day and return to the city (par. 8); during the winter of 1924, she continued to treat petitioner *cruelly* and without any regard and consideration for him; at Christmas of that year, when petitioner's sister visited them, defendant *insulted and abused* her and *so violently swore* at her and himself and the entire family that the sister was compelled to leave the house; her conduct from that time on, became more cruel and *domineering*; she continuously made slurring remarks concerning petitioner to friends, relatives and business associates; she sought to alienate all petitioner's friends and relatives, ordered them out of the house, insulted them, refused to let them in when they called and in every possible way sought to destroy petitioner's peace, health and happiness of mind; in the early spring of 1925, she adopted a course of conduct toward petitioner in which she persisted "and her attitude seemed to become one of *malicious hatred, scorn and contempt*, and she would become more than ordinarily abusive, lock him out of his sleeping quarters," and on one occasion she locked petitioner out of a room leading to his sleeping quarters "and he was

*thereupon compelled to push the panel out of the door in order to gain access to his room*, whereupon defendant became *violently enraged*, abused petitioner and he was greatly in fear that she would do him some bodily injury" (par. 10); about September, 1925, and for sometime before then "defendant *unjustly* accused petitioner of infidelity and charged him with *meeting women while taking his usual morning exercise on horseback through the parks and roads in the vicinity of Glen Ridge*"; she charged him with being mentally incompetent, and attempted to break up his business and to destroy his peace of mind and happiness, to break his health and to injure him in every way (par. 11); some weeks before the 1st of October, 1926, she secured revolvers with which she threatened to kill him; these threats were made *not only to him*, but to others who repeated them to him, and her brutality and *relentlessness* increased and for some days prior to September 30th, and on that day, her "*infamous* abuse reached such a height, that petitioner, whose health had been greatly impaired by the cruelty of the defendant toward him, became alarmed and in fear that if he continued to reside at his home in Glen Ridge with the defendant, that she would carry out her repeated threats and kill him, or do him severe bodily injury, whereupon he left his home and went to live with his friends at Glen Ridge, New Jersey, on October 1, 1926, where he has since then been residing" (par. 12).

### Conclusions of the Vice-Chancellor.

The Vice-Chancellor in his conclusions says (p. 52)—“It is unnecessary for me to review in detail the evidence on which I have reached my conclusion. Numerous acts of cruelty on the part of the defendant wife toward the husband were alleged in the petition, *some of which found little support in the evidence submitted and some of which I have considered to have been maintained, but which standing alone and without the event which culminated in the separation of the parties on October 21, 1926, I did not consider as sufficient justification for the abandonment of the defendant by the petitioner.*”

The Vice-Chancellor then considers the testimony with respect to the event, which he says, coupled with the other evidence in the case, in his opinion, warrants the relief.

He refers to the fact that, some months before the parties separated, defendant had become “*insanely jealous of her husband,*” and says that it is *immaterial* whether she was rightly or wrongly jealous because, in either event, her conduct would not have been justified. He finds that her jealous attitude made living together an intolerable existence; that intervention by the pastor of the church found the petitioner tractable and willing to forgive and forget, but that the wife’s jealousy prevented her from receiving the pastor’s suggestions “*in the spirit of compromise and good will which in my judgment should have controlled her attitude and the intermediary’s efforts came to naught.*” The Vice-Chancellor then says that, at one of the interviews with the rector, the wife told him that she had purchased a revolver for the purpose of killing her husband, and, on one occasion,

had stood by the side of the bed in which her husband was sleeping with a loaded revolver in her hand, intending to shoot him, “*but that her heart had failed her and she had reconsidered her proposed action because the thought of taking a human life was repugnant to her.*” She exhibited the revolver to the rector. There was another weapon “*which she had and which was obtained from the defendant by a physician who later examined her.*” The pastor informed petitioner of these facts and advised him for his personal safety that it would be wise for him to leave the house, which he accordingly did. Because of these remarks made by the wife to the pastor, as the Vice-Chancellor found, he said, “*I think, under these circumstances, the petitioner was justified in fearing for his life so long as he remained under the same roof with the defendant and that his abandonment of the defendant was fully justified.*”

Upon the issue of condonation which was made in the case, the Vice-Chancellor said: “*The only testimony indicating any such condonation was that of the defendant and that I do not believe.*”

The record shows, I submit, that the husband himself testified to facts which showed condonation.

The Vice-Chancellor concludes: “*After the separation the petitioner had the defendant examined by two very reputable physicians of the City of Newark, for the purpose, evidently, of determining her sanity. This fact is seized upon by the defense as an act of cruelty on the part of the husband, but in my judgment the proceeding was fully justified and prompted by the best of motives.*”

The Vice-Chancellor, therefore, comes to the conclusion that extreme cruelty, sufficient to sustain a decree, has been proven because of the statements alleged to have been made by the wife to the pastor, to the effect that she had purchased a revolver for the purpose of killing her husband and that she, at one time, actually approached her husband with it while he was sleeping and that she reconsidered her proposed action because the thought of taking a human life was repugnant to her.

It is significant that the husband had his wife examined by physicians as the Vice-Chancellor says "for the purpose, evidently, of determining her sanity."

The Vice-Chancellor holds that the proceeding was *fully justified* and prompted by the best of motives.

If the proceeding of the husband, in having his wife examined by physicians for the purpose of determining her sanity, be *justified* it must be because the conduct of the wife rather than indicating, in the words of the petitioner used in his petition, "malicious hatred, scorn and contempt" evidenced an unbalanced mind. Only if that were so could the husband possibly be justified in having his wife examined for the purpose of determining her sanity.

#### THE FACTS AND ARGUMENT.

The parties were married May 15, 1902 (p. 60). When the husband left in October, 1926, they had been married twenty-four years (p. 60). They are both cultured and, at the time of the separation, were living in a house owned by them in Glen Ridge, which the husband had built (p. 60).

In his direct examination the husband says that: some time after the marriage, the wife began to find fault with him, "at times got very angry and made things very unhappy for me from time to time"; she did not seem to like his relatives; he refers to an incident in 1912, when he says he found some pictures of his mother and aunt, which had been on his chifforobe, torn to pieces when he came home one day; he refers to an incident in 1914, when he says he had planned a fishing trip with one of the men at the store; he was to meet the man at the Erie station at Montclair in the car; at the last moment the wife and two children of the man desired to go along and Pfender took them on the trip; when he came back, on his way taking the party home, Mrs. Pfender happened to be sitting on the side porch and saw the party; when Pfender arrived home "she was furious"; he tried to explain the circumstances but she would not listen; she kept him out of the house for two or three days and broke his fishing rod (p. 62); she objected to some photographs of his mother and aunt being around "contained in round frames" and he was obliged to put them in the closet; in 1923, he planned another two weeks' fishing trip with the same man with whom he had been fishing in 1914; he was pretty well run down, but Mrs. Pfender did not desire him to go; she finally agreed; then she changed her mind; there was a dispute about it on Decoration Day of 1923, and he had to leave the house "and was away for several hours walking trying to calm himself"; when he came back he found his fishing licenses torn up; when he asked his wife why she had torn them, she said that she did not want him to go; he said he was going, whereupon she said: "Well, all right, if you go I am

going somewhere, too. If you let me go to Europe with my son, take a trip to Europe, you can go on this fishing trip"; he acquiesced in this; while he was on his fishing trip she telegraphed him that if he did not arrange to get the money at once for her trip she would leave him and never come back; he arranged for the trip; he found out that, while he was away, his wife had taken a blank check which he had left two or three years before, when away on a short business trip, and filled in the check for \$2,000 and presented it to the bank; the bank would not cash it because his account was not good for it. He then testifies (p. 65):

"Q Coming down to 1924, do you remember a taxicab incident? A Yes, in 1924, may I believe it was, *Mrs. Pfender was not well, and her doctor, who had been our physician for twenty years or more, recommended a specialist, and in order to be near his office where she could get treatments, she stayed at the New Western Hotel and she was there for two or three days, and then she complained to me—I used to go up to see her every night, and sometimes during the day, and finally she complained that she couldn't stand the treatments, and she was in great pain, and she wanted to see her doctor. So I called her doctor in, and he said, 'All right, I will see what I can do for you.'*

Mr. Lum: We are not interested in anything except the taxicab incident.

A (Continuing.) *The doctor took her to a nursery, a child's hospital, that night, and provided her with a day nurse and night nurse, so she would be comfortable, and the next morning when I got to the hospital she was all dressed with her things ready to go, and I had a message before I had gone into her room, that the doctor wanted to speak to me, and he telephoned me and said he had been discharged and insulted.*

Q Did you tell your wife what your doctor had told you? What did you say to your wife? A 'The doctor said that he had been discharged.'

Q You told her that? A Yes; he had told me that he had been discharged. She found fault with my having spoken with the doctor at all. I got a taxicab and started down to the Twenty-third street ferry, and on the way down she became violently angry and hit me in the face with her fist as hard as she could.

Q Was it painful? A Yes, it was. She used her full force.

Q You say she became violently angry; can you tell us what aroused the anger; was it your talk with the doctor or what? A It might have been the talk with the doctor, or the fact that she objected to staying there. I cannot tell you what the cause was, but I know she took it out on me.

Q Did you say or do anything to incite this abuse? A Absolutely no."

He says that in the summer of 1924, they were at Westport, New York, where they had a cottage; he had ordered a new boat and knew very little about it and (p. 66):

"Mr. Dougherty was there at the time with his family, and he knew about these engines, so I asked him and some of his boys to go out with me so I could learn about the boat. Mrs. Pfender was very angry about it, and she said she had been neglected and hadn't been asked to go, and that started trouble, which ended the next day, finding fault with the servants, and compelling me to take them down to New York that day in the train. Nothing must do but I must go with them, and she called them all kinds of names; they were Japanese; they had been very good, and doing everything for her, I am sure, as they did at home, and she stayed there two or three days."

She came home. Pfender was on his way back to Westport and met her at Saratoga and "I asked her what was the matter, and she said she didn't want to stay there any longer."

"Q Was she angry? A She seemed to be fairly calm."

She came on home and he continued on to Westport.

At Christmas, 1924, she became violently angry and talked unkindly to his sister, which caused the sister to leave (pp. 74, 75).

He states that in 1925, Mrs. Pfender refused to permit him to get to his sleeping porch, and (p. 76):

"Mrs. Pfender became angry at something or other and went in the room and locked the door. This room where she slept led to the sleeping porch, where I slept, and I told her that if she did not open the door so I could get into my sleeping quarters, that I would break the door down, and she refused to, so I pressed against the panel, and the center panel of the door came out, and I went in."

He then testifies (p. 76):

"Q Coming on down now to a later time, what was her treatment of you and her attitude toward you, quite continuously, as time went on; did it get better or worse? A It got worse.

Q In what respect? A She found *more fault* all the time with me and made things very *uncomfortable and unpleasant*. She would say that she overheard remarks about my personal appearance; that she had heard people criticise my ears; said that she had heard in the church, where I was a vestryman at that time, and some of the vestrymen when they would see me, would hold their hands up to their ears this way and waggle them, and say that I looked like a

donkey. She many times wanted me to have an operation on my ears, because of my appearance, and said my mother didn't know how to take care of me, or I would never had had such big ears, and she wanted me to change my name, because it was a German name, and spell it the English way, because she was English."

He kept his own horse and went horseback riding in the morning in the Essex County Park and, in the spring of 1926 (p. 77):

"She accused me of riding in the park with women; said that she had hired a detective to follow me, and went into great detail as to how she accomplished the fact, and that he had followed me, he rode a horse himself; he saw me meeting women up there, and said that I was doing it constantly.

Q As a matter of fact, did you ever? A Never, but once, that I recall, did I ride with a woman in the park, and that was an occasion when a certain woman, a young girl she was, came up when I was riding with two men; these other men knew her much better than I did; I simply rode along with the other man and she went ahead with the other one of the two.

Q When your wife spoke to you, did you tell her that? A I did.

Q Did you tell her that on no other occasion had you met any other woman? A I did.

Q Did that appease her, or did she continue the accusations? A She continued the accusations; she didn't believe it, and she had proof of it from the fact that she had heard."

He then refers to an incident on Easter Sunday in 1926 (p. 78):

"A Yes, on Easter Sunday I ordered her a bunch of violets from the florist, and when they came on Easter morning, she refused to wear them, because she wanted some other kind of flowers.

Q And was your wedding anniversary May 15th? A Yes; our wedding anniversary I ordered a box of her favorite roses from the same florist, and when I got home that evening, the box was lying below the front steps unopened, where she had thrown them."

He refers to an incident in May, 1926 (p. 79) and says:

"A I was locked out of the room or she made an attempt to lock me out of the room, and *I pushed the door in*; I put my foot in it before she could get it locked, and she tried to push me out. My hand *just touched her* in trying to force me out, and she immediately jumped to the telephone, which was three feet away from the door, and called up the police station and said, 'This is Mrs. Pfender; I want you to know that my husband has struck me, and I want you to know about it.'

Q Did you strike her? A I did not."

Coming closer to the date of the separation, he says that in August, 1926:

"She became *very much worked up*. *It was after I had this episode about this young woman*, and she persistently nagged me and found fault with me and wanted me to bring a meeting around between this young person and herself and myself so she could settle the matter."

He had stated (p. 78) that Mrs. Pfender had complained about his having been out driving with a young lady and of having taken dinner or lunch with someone who was employed in his office, and he says that he had informed his wife that he *had* taken this young lady, employed in the office, out to dinner. It was his association with this young lady which led to the difficulty in August, 1926 (p. 79). Pfender says (p. 80):

"In August, 1926; it was after I had told her and *admitted that I had gone with this*

*young woman, one of the employees in our office*, and I told her that I had on a warm evening when we had been working at the store, *I had taken her on a ride*. *All of these places* were the most public places, where other people were around."

As a result of the difficulty about this young lady, he says that she (Mrs. Pfender):

"constantly raved at me, and annoyed me and kept after me, and finally *she told me that she had stood over me with a revolver when I was asleep, and that it was her intention of killing me, but she decided finally not to*. Things got so very bad, my health began to break, I couldn't sleep, I was nervous; I went into another room to sleep; I locked all the doors, and there were two beds in the room and I slept in the first one; I was afraid that she might shoot me through the door."

He says that he knew that there was a revolver in the house (p. 81) but that he had never owned one. A revolver was bought around 1921 for the express purpose of giving it to the gardener (p. 81). He says that her conduct in September, 1926, made him nervous and he lost weight and he was in such a condition as that he could not sleep, and that on October 1, 1926, he left and that he then began to gain weight right away and "today I am at least ten pounds heavier than I was in my best condition ever since my marriage."

Upon advice received from his lawyer, he had Dr. Washington and Dr. Beling, who are two prominent alienists in Newark, observe his wife. He denies that he was trying to have his wife adjudicated insane or that there was any attempt made to take her away by force (p. 83),

but on page 106, on cross examination, he testified:

“Q Did you ever sign a request to two physicians or any persons to have your wife committed for observation or for insanity?

A I signed something that I was requested to sign; I don't know what it was.

Q You don't know what it was? A No, it was some paper that *these doctors wanted me to sign.*

Q That had to do with her commitment for insanity? A I don't know that it was for commitment.

Q Didn't you swear to it? A Swear to what?

Q To the paper you signed? A I don't recall that at all; I may have; I don't recall it.”

That Pfender attempted to have his wife adjudged insane must be considered as an admitted fact in the case although vigorous efforts were made to suppress the fact. Dr. Beling, who examined the wife with Dr. Washington at the husband's request, stated that he had seen Mrs. Pfender upon two occasions (p. 147) to make an examination of her. He denies that he requested Pfender to sign any application for commitment. He states that the examination was “*because her mental condition was in question.*” He admits they had been considering the matter as to having Mrs. Pfender committed (pp. 149 and 150). He admits that he and Dr. Washington, the other alienist, and the Rev. Dr. Dougherty, who was a witness in the case and whose testimony will be hereafter referred to, went to the home of Mrs. Pfender on the evening of October 1st, and (p. 150):

“A Yes, I think the three of us went there that night, and we went there because *I had previously arranged with Mrs. Pfender to try to bring about a reconciliation between*

*Mrs. Pfender and Mr. Pfender, and try to smooth out her difficulties,* and when we went there we found the door locked and the place dark, and I believe that, not being allowed admission, we went away. That is my recollection of it.”

Dr. Beling puts himself in the position (p. 150) of having attended with Dr. Washington for the purpose of bringing about “*a reconciliation between Mrs. Pfender and Mr. Pfender, and try to smooth out her difficulties*” although he advised Pfender that it was *unsafe for him to live with Mrs. Pfender* (p. 151).

Dr. Beling indicates in his testimony (pp. 152, 153) that he thought that Mrs. Pfender had *delusions* with respect to the conduct of her husband. He says (p. 53): “\* \* \* She was obsessed about her husband.” He attempts to indicate that, in his opinion, she had no cause or reason for her jealousy, but overdoes the matter. He says (p. 152):

“Q Did he tell you that he had confessed to her that he had taken a young woman out to dinner while she was at Westport, and had taken the young woman driving on five or six occasions? A He told me something like that. He told me that he had told his wife that he had taken somebody out, simply to satisfy her, because she *was after him all the time, and he thought that that perhaps might satisfy her, and he also told me that he recognized how foolish she had been.*”

By this testimony the doctor would seem to indicate that Pfender had confessed to something which he had not done to satisfy his wife. He admits that Pfender did tell him that “he did go out with some woman, I think, if I recollect correctly.” The difficulty is that Pfender had himself testified that he had, in fact, taken the

young lady employee of his office to dinner upon several occasions and "that I had on a warm evening when we had been working at the store, I had taken her on a ride" (p. 80). Dr. Beling also says that Mrs. Pfender expressed her love for her husband (p. 153) and that she would be glad to have him give up these things.

Dr. Washington was called (p. 167) and said that he had examined Mrs. Pfender to determine her mental condition. He denies that he signed any commitment papers and he denies that Pfender signed any papers at his request (p. 168). He says, in response to questioning by the Court (p. 168):

"The Court: *Doctor, after you had made the examination of Mrs. Pfender, did you think it was such a case as would warrant you in signing such a certificate?*

The Witness: *I think it would.*"

This doctor also says that the wife's thought was that the husband had shown too great interest in a young lady in his office (pp. 169, 170).

Harold Simandl, a member of the Bar of this State, was, at one time, counsel for Mrs. Pfender, and he swears (p. 154) that in December, 1926, he had a conference with Mr. Lum, counsel for Pfender, and that Mr. Lum showed him a commitment of an insane person under the 1918 Act for Mrs. Pfender signed with the name "of Dr. Washington and another doctor, whose signature I cannot recognize" and that (p. 155):

"I observed that ten days had elapsed from the making of the paper, and the date that he showed it to me. I said, 'You will have to get another examination in any event,' and he said, 'Why, if we wanted to use this paper, we could have,'"

and he further testifies (p. 156):

"Q I (Mr. Lum) told you that certain doctors had considered that her case required very close watching at one time? A *You told me that a doctor in New York as well as some doctors here, had come to that determination, yes, sir.*"

Mr. Lum does not deny this statement. He rests upon the statement of the two doctors that they do *not recollect* that any such paper was signed; nor do they *recollect* requesting Pfender to sign *any* papers, although Pfender testifies that he signed some papers "*that these doctors wanted me to sign*" (p. 106). From the testimony of Pfender (pp. 87, 88) it is clear that such a certificate *was* signed:

"Q You don't think she is insane, do you? A No, I am not an expert on that subject; I cannot tell you.

Q But you had Dr. Beling and Dr. Washington sign a certificate of some kind, did you not? A They may have issued some certificate.

Q Don't you know that they did, Mr. Pfender? A They showed me some kind of a thing.

Q Don't you know that it was adjudging your wife insane? A No, I don't know that.

Mr. Blankenhorn: I call for the production of the paper.

Mr. Lum: *I have not got it; it is in the hands of the doctor. Dr. Washington and Dr. Beling are both available, and can give you their opinion; it never was filed.*

Mr. Blankenhorn: Will you state what the paper was, Mr. Lum?

Mr. Lum: I cannot tell you; I don't recall it. *At any rate, they signed; it was their opinion that the woman was not mentally competent, in my judgment; I*

*don't recall the detail.* They have it; you can call for it.

Mr. Blankenhorn: And providing for her commitment?

Mr. Lum: No, nothing filed."

On cross examination, Pfender says that the *first* charge made against him by his wife with respect to other women was in the *spring of 1926* (p. 83) and that "had reference to horseback riding." He then says that the matter of his taking the young lady from the office out riding and to dinners came up in August, 1926, while they were at Westport and that "within a few weeks, yes, *right then at that time; I admitted that to her and told her.*" He says that his wife had been asking him what was the trouble between them in the spring of 1926 (p. 84) and:

"Q And just out of a clear sky you said to her that you had been going out with this young woman? A She accused me of it. She said that she had had people follow me and had seen me going out; and that I had stayed out all night on various occasions, and she wanted to know about it.

Q And she told you, did she not, that the automobile was out of the garage at night? A Yes, she told me that.

Q And she wanted to know about that? A She said she had me checked up on the gasoline that I was using, and that I had been out all night many nights.

Q And she asked you about that and then you told her you had been out with this young lady? A *I told her about the few occurrences.*"

On cross examination as to the episode of his being kept away from his sleeping porch, he said (p. 86):

"Q And on this particular occasion that you have referred to, she had had a quarrel with you about something, and she had run into her room and locked the door? A Yes.

Q She didn't threaten to kill you that night? A No.

Q And you were not afraid that she was going to kill you, were you? A No, I was not.

Q You broke right into the door, right in through the door? A I had had so many occasions when I was locked out of my bedroom, for no cause whatsoever, *that I made up my mind it was time for me to assert my rights.*

Q And so you broke into that room; there is a room adjoining that, isn't there, into a bathroom or some other room, and from that into this place where she keeps her pets? A Yes, there is another front room."

He testifies (p. 87):

"Q Even though she was very angry at your sister and wouldn't allow her to come around still you wrote to your wife about her? A She would get over these *spells* and then we would make up again, but I kept them apart as much as I could.

Q Then she did make up with your sister? A Yes, she would make up with me, she would make up with anybody after she got over these *fits.*"

When Pfender told his wife in August, 1926, at Westport, about his going out with this young lady, etc., he says that she became ill (testimony, p. 89):

"Q Mrs. Pfender was ill immediately after you told her that and called a doctor? A She called a doctor, as I recall it, yes.

Q Dr. Hughes, of Westport? A I think it was Dr. Hughes. Yes, it was Dr. Hughes.

Q And she fell, didn't she, striking her head against the bedpost? A I don't recall that.

Q But you do recall that she was in bed and had to have a doctor? A She was lying there on the bed, yes.

Q Did she faint at any time during this trouble between August 7th and August 9th? A Yes, she was—I don't know whether she fainted; she was lying there on the bed, I know."

They came home, and (p. 90):

"Q You continued to live with her right up to the first of October, didn't you? A Yes.

Q And you occupied the bedroom with her? A At times, I did, yes.

Q And it is a fact, isn't it, that you had sexual intercourse with her up to September, 1927—1926? A I am sure I don't recall the date. I don't think it was as late as that; it couldn't have been as late as that.

Q But at any rate, it was after you had returned from Westport? A Yes."

During the summer of 1926, while the wife was in Westport, Pfender wrote her most loving letters. He had known for some time that she was an *ill woman*. He had written her in May, 1926, a reply to a note of hers of May 22nd (p. 251):

"It is about time you realized that *on your health* depends your happiness and mine, too. I have been at you for *several years to take treatments* and get yourself well before it was *too late but you persist in neglecting yourself to try to keep this big house going, and you have not been successful.*"

He was attempting to get her to sell the Ridgewood avenue house, and of the house he said, "It is cursed just as Mrs. F. said, there is no doubt about it." And:

"It has come to the point now where you will have to decide what is to be done. I cannot and will not continue to live the way I have for a long time. You seem to care more for your home, your garden and your pets than you do for me or my comfort and happiness and if this is the case, the sooner

we settle matters the better. *There is as much to be said on my side as on yours.*"

In a letter written June 29, 1926, he said (p. 255):

"\* \* \* I got home at 6:20 last night and Mrs. C. had a nice dinner ready, and then I dressed and rode from about 7:30 to 9 o'clock. Tonight I may go over to see Helen as she goes away next Tuesday.

We have had delightful weather, but quite warm. Hope you are rested and enjoying yourself to the utmost. It seems strange to see polly's empty cage and no canaries in the porch or cats around, etc., etc."

ending the letter "Good bye, dear, with lots of love from Carl."

He wrote her a letter June 28, 1926, in which he says: "Arrived safely, had a rushing day at biz, etc., etc.," ending it "Love from Carl."

While on a trip at Lake Champlain, he wrote her a letter of July 15, 1926 (Exhibit D. 4, p. 257), in which he said, among other things, "How is your rib? Hope it has stopped bothering you. Keep up the heat treatments, etc.," and ended it "Lots of love from Carl." A letter dated July 6, 1926, he ended "Good bye, dear, with love from Carl," and one dated June 30, 1926, "Lots of love—in haste, Carl." Again, on July 7th, he wrote a letter with respect to household matters as one spouse would write another, and ends it, "Good bye, dear, with lots of love and kisses from Carl." Another letter dated July 12, 1926, closes, "Much love from Carl;" another, written on the same day ends, "In haste love from Carl" (p. 262). In one written July 13, 1926 (Exhibit D. 10, p. 263), he says:

"Don't let any statements that your sister makes about being injured in the auto accident or anything else she says worry you.

If she makes any claims I have insurance to cover it, but don't let her know anything about it, etc., etc.,"

ending it, "Good bye with lots of love from Carl." He wrote an intimate letter of July 26, 1926 (p. 264), closing it, "Good bye, dear, with lots of love from Carl;" another, on July 19, 1926 (p. 266), closing it, "Good bye with lots of love from Carl;" another, on July 20, 1926, closing it, "Good bye dear with lots of love from Carl;" another, dated July 21, 1926, addressed "Dear Peaches," in which he says, among other things, "How delightful and cool it will be in the new house with windows and doors all around and way up on the mountain-side out in the open. Good bye, dearest. With lots of love from Carl;" another on July 22, 1926, addressed "Dear Peaches" and ending "Good bye, dear, with lots of love from Carl" (p. 270); another on July 28, 1926, addressed "Dear Peaches," in which, among other things, he said:

"Sorry you were upset in your tummy but you must be careful not to overeat, especially when it is hot,"

and closed it, "Good bye, dear, with lots of love and kisses from Carl." He wrote a letter on August 2, 1926, addressing it, "My dear little Wifey," telling her about everything he has been doing as to buying things for the house, etc., etc., and ending it, "Good bye, Sweetheart. With lots of love and hugs and kisses from your loving husband, Carl."

The husband's *present* attitude towards his wife is well illustrated by his remark on page 85:

"Q She worked very hard, didn't she, with this housework? A If she did, *it was her own fault*; I provided her with plenty of money and with servants which she couldn't keep."

It was within five days after this loving letter ending, "Good bye, Sweetheart. With lots of love and hugs and kisses from your loving husband, Carl" that Pfender told his wife at Westport about his having taken the young lady on automobile rides and to dinner and they closed the house at Westport on August 9th and came home (p. 89). There is no question but that Mrs. Pfender was upset, and there is no question but that she was an ill woman and that Pfender knew it. Pfender tells (p. 89) how she *cried* and was *ill* and how they came home, driving three hundred miles in one day, although he knew that his wife was ill. And he places the blame for *that* on his ill wife. He says (p. 90):

"Q And then you drove home by automobile? A Yes.

Q Three hundred miles in one day? A Yes.

Q Although your wife was sick? A My wife wanted us to keep going; she didn't want to stop; she didn't want to stop for dinner; I insisted.

Q She wanted to get home? A Yes."

He testified with respect to the time that she was in Westport and he was in Glen Ridge (p. 95):

"Q And she was to go up there and be there while the work was going on? A Yes, that is what she wanted to do. I had engaged a cottage the first of the season, along in February, a cottage that belonged to my cousin.

Q She went to Westport? A Yes.

Q She didn't make any accusations against you by letter to you, did she, during that time that she was at Westport? A Not that I know of, no, sir.

Q *And everything was lovely between you?* A *Apparently so.*

Q You wrote her almost every day, didn't you? A I wrote her very often."

And (p. 96):

"Q When you told her at Westport about this young woman, didn't she say that she couldn't understand how you could have written her such loving letters, and to have been going about with someone else? A Probably she did; she used to say those things."

That his wife had been ill for some time is admitted by Pfender, although reluctantly, on page 96. He says:

"Q At the time she discharged her doctor and she had this quarrel with you in the taxicab? A She demanded that I call the doctor; she was in *great pain* at the New Western Hotel, so I did, and he came there, and he recommended that she go to this hospital where he could see what he could do for her. It wasn't at my suggestion at all. I did it entirely at her suggestion.

Q Her health was delicate, wasn't it? A She complained of some sort of a sciatic trouble.

Q It had been so for some time, hadn't it? A She complained a great deal; *always has complained a great deal*.

Q And you were very solicitous about her health? A I always had been, and spent fortunes on doctors, gladly."

And he says on page 97:

"Q Didn't you want her to have some other examination at this time, September, 1926? A I don't recall it at all, *except that I felt that she wasn't right* and that I wanted to get the best advice that I could, and it was on the advice that I got from my attorney that Dr. Beling and Dr. Washington tried to see her."

Pfender was solicitous about his own health. He says that it was such "that I never was

really well." He had been examined by the Life Extension Institute every year from 1922 to 1926, and the report from that institute showed that he was in better condition in May, 1926, than at any other time (p. 100).

It is clear, I submit, from the examination of petitioner's testimony, that there was no justification whatever for the charges made in paragraphs 4, 5, 6, 7, 8 and 9 of the petition (pp. 16-18). The existence of any such alleged situation is completely negated by the loving letters written by the husband to the wife during the summer of 1926 while she was at Westport. The proof was limited, in effect, to the charges contained in paragraph 10 that, upon one occasion she locked him out of his room, in paragraph 11, that she accused him with meeting women while taking his usual morning exercise on horseback and that she secured revolvers with which she threatened to kill him.

As to this revolver incident, on direct examination, he testified (p. 80) that in August, 1926, she told *him*, after constantly raving at him and annoying him and keeping after him (this was after he had told her of the young lady from the office whom he had taken out riding and to dinner) that, "She had stood over me with a revolver when I was asleep and that it was her intention of killing me." On cross examination (p. 92) he says:

"Q She never pointed a gun at you and tried to shoot you? A No, not that I know of."

But when he broke down the door in *September*, 1926, when she had shut herself in, he was not afraid that she would shoot him (p. 86):

"Q She didn't threaten to kill you that night? A No.

Q And you were not afraid that she was going to kill you, were you? A No. I was not.

Q You broke right into the door, right in through the door? A I had had so many occasions when I was locked out of my bedroom, for no cause whatsoever, that I made up my mind it was *time for me to assert my rights.*"

Pfender's subsequent testimony on cross and his testimony (pp. 276, 277, 278), indicates that Mrs. Pfender *never* told him that she had stood over him, thinking of shooting him, etc. Pfender finally says (p. 276) that the only person who ever told him of such a threat was Dr. Dougherty, unless Mrs. Conklin said something to him about it. He is certain with respect to this because, recalled at the close of the case for the purpose of proving that there was no condonation, he places the occasion when he ceased having sexual intercourse with his wife as the time when Dr. Dougherty told him (p. 247) of the incident.

Dr. Dougherty is the clergyman of Christ Church, in Glen Ridge (p. 113). He has been a friend of both Mr. and Mrs. Pfender for seven years. On direct examination he said, in response to a question, "During the last few years, particularly 1926, what did you observe in relation to the conditions in the Pfender home?" "I noticed that they were becoming more strained."

His examination discloses, however, that he knows *nothing* about the unpleasantness between Mr. and Mrs. Pfender except what he inferred from an incident in Westport, in 1924 (p. 123), of which he knows nothing, and the incident which took place in September, 1926. On his cross examination he says, when asked

as to the first time he knew of any difficulty (p. 126):

"A Oh, I cannot be accurate as to it; probably two years, two and a half years before that.

Q And how did that manifest itself? A I received a very violent and insulting post card from Mrs. Pfender to one of the guilds in the church.

Q Have you the post card? A No; I tore it up."

He then, however, gives the following testimony (p. 126)—

"Q Mrs. Pfender has contributed largely, has she not, to the work of the church? A Yes.

Q Financially? A Yes.

Q And for the past two years has been a very devout woman? A The past two years?

Q Yes. A I haven't seen her since the summer of 1926.

Q For the two years prior to that? A Oh, yes.

Q She attended church regularly? A Yes, fairly so.

Q And to all outward appearances she was a good Christian woman? A Unquestionably."

But, referring to what took place in September, 1926, he says that Mrs. Pfender came to him complaining about—

"Mr. Pfender's immorality and brutality—*alleged* immorality and brutality."

He had called at their residence at *Mrs. Pfender's request*. After talking with Mrs. Pfender, he asked Pfender to take a walk with him and, during the course of the walk, he told Pfender what Mrs. Pfender had told him, and he says that Pfender after being told—

"seemed to be in a very greatly disturbed state of mind."

"I had a very great desire to be the friend of both parties; *I had a real affection, and still have, for both Mr. and Mrs. Pfender,* and felt that possibly I might be of some use in quieting down what was evidently an intolerable disturbed situation."

He then said—

"My conversation with Mrs. Pfender—I left her in a less violent attitude toward Mr. Pfender."

Mrs. Pfender told him that Pfender had been running around with some woman, an employee, and she wanted to have an interview arranged with the young woman. Dr. Dougherty spoke to Pfender about that and— (p. 116)

"He then told me what was testified to here, as to his having been *out to dinner on a few occasions and taking this girl for an automobile ride or two.*"

On cross examination Dr. Dougherty could find nothing at all wrong in Pfender taking this employee out to dinner and for "an automobile ride or two" and clearly indicated that, in his opinion, it was none of the wife's business and that she had absolutely nothing to say about it and that her feeling of jealousy was wholly without any justification whatever. He had called the jealousy of Mrs. Pfender "*malign and sinister.*" He said (p. 128)—

"Q Do you consider it malign and sinister for Mrs. Pfender to be jealous of a young woman whom her husband told her he had been taking out to dinner on at least six different occasions? A Yes, I do.

Q You think that a married woman in love with her husband should not object to that? A I certainly do not."

Dr. Dougherty apparently believes in the use of force between husband and wife.

In speaking of the unloaded revolver, which Mrs. Pfender had, and the fear of Pfender, he testified (p. 131)—

"Q This revolver was not loaded and it was tied up in a box, wasn't it? A It was tied with a tape in the box, and there is a package of bullets alongside in it.

Q But it wasn't loaded? A No.

Q Did you know that Mr. Pfender had broken down the door into her room? A He told me.

Q You still thought that he was afraid of her? A *If my wife locked me out of the house, I would break down any door in it.*

Q Will you answer the question? A I did.

Q You thought he was afraid of her? A *No, not because he broke down the door.*

Q You didn't think he was afraid she was going to shoot him? A Yes.

Q You did think that? A Yes.

Q At the time he broke down the door and went into her room? A I don't know that.

Q That would indicate to you fear of being shot, would it? A Possibly he wasn't afraid at that instant.

Q Did he tell you how many times he broke down the door? A *He told me of two occasions, one when he had broken a panel out of the door when he was locked out, and once when he put his foot against the door. Those are the only two occasions he told me about.*"

His testimony is equivocal. He had stated on direct examination that Mrs. Pfender wanted very much to arrange an interview with the young woman employee of Pfender's office (p. 116). On cross examination he disclaimed any knowledge of what the purpose of any such interview was. He said (p. 129)—

"Q And she just wanted you to reason with him with respect to this young woman? A She did not want me to reason with him.

Q What was the purpose, then? A Apparently the purpose was to tell me of Mr. Pfender's brutality and infidelity, with the idea of arranging a meeting between Mrs. Pfender and this young woman. When I proposed that I see Mr. Pfender, Mrs. Pfender thought—

Q For what purpose, Mr. Dougherty? A To talk over this matter of the conversation with Mrs. Pfender I had just had.

Q And to try to break up the relations between this young woman and her husband?

A There was no statement of any such thing.

Q You said that that was what it was for? A No, I didn't.

Q You just thought that she wanted to go and talk to this young woman, is that right? A You cannot put words in my mouth, sir.

Q I am asking you. A Mrs. Pfender talked with me at great length, and after she had told me of her suspicions and Mr. Pfender's brutality, I said, 'If that is the case, I must talk with him,' purposely not stating any reason why I was going to talk with him, for I did not believe Mrs. Pfender.

Q What did you understand that meeting between Mrs. Pfender and his young woman was to be had for? A *I couldn't for the life of me see the faintest imaginable sense in it.*

The testimony with respect to the revolvers, which testimony is the *only* testimony which the Vice-Chancellor holds indicates sufficient cruelty to warrant the decree (p. 52) is of the most illusive nature.

Dr. Dougherty says that, on one occasion when she was talking with him, she stated (p. 117)—

"she had taken a revolver and stood—I have forgotten whether she said stood over him or near him, and had thought of killing him, but the thought of taking life was repugnant to her, and she had noticed not to. She said, 'I want to show you something,' and I had an

idea of what was coming, and my idea was correct; it was a Colt .32.

Q Have you it? A I have it not; you have it for me.

(At this point a package was handed to the witness by Mr. Lum.)

The Witness: That is the Colt .32.

Q Is this the gun? A That is the gun and package it was in.

Q Has it been out of your possession from that time until this until it was brought here?

A Yes.

Q When? A I didn't get it on that occasion; it was in her keeping, I suppose, for some time, *and strange as it may seem, I cannot recall the exact circumstances under which this particular revolver came into my possession.*"

It was, indeed, strange that Dr. Dougherty should be unable to recall the circumstances under which this revolver, the production of which by Mrs. Pfender was sufficient, in his opinion, to make it unsafe for Pfender to longer live with his wife, and to justify Pfender in leaving, came into his possession. *It was a most important matter.* It was the element which warranted the separation of these two Christian persons who had been members of Dr. Dougherty's church for some years. Mrs. Pfender contributed largely to the work of the church financially and otherwise (pp. 126, 127). When Dr. Dougherty made his affidavit, on the application for temporary alimony, he seemed to be quite clear as to the *exact* circumstances under which this revolver came to his possession. He said (p. 41)—

"Many incidents might be narrated at length as to all of this, but it culminated, so far as deponent was concerned, in September, 1926, at which time the said Lillian E. Pfender stated to deponent that her husband was in the habit of meeting women while he was out horseback riding in parks in the

morning, that he had been unfaithful to her and that she *intended to kill him* and that she at that time showed deponent a revolver that she had for that purpose. Deponent took the revolver from her *and still has it.*"

When Dr. Dougherty is confronted with these statements made in his affidavit he said—

"That is *technically* incorrect. I did not take that revolver at that time."

And further—

"Q You got that revolver from the gardener? A Yes, that is correct."

Now, a moment before Dr. Dougherty had *forgotten* "the exact circumstances under which this particular revolver came into my possession." But now he remembers that he got it from the gardener (p. 128). Dr. Dougherty and Pfender went to the gardener and asked him about it. The gardener says he did not give the gun to Dr. Dougherty (p. 239), but that he gave it to Pfender a few days before he (the gardener) left to go to the other side, which was in January, 1927 (p. 238). The affidavit of Dr. Dougherty was verified in July, 1927, quite soon after the happening of the events.

There was more than a *technical* incorrectness in the affidavit of Dr. Dougherty. He stated in his affidavit that Mrs. Pfender had said to him that she *intended to kill* her husband "and she at that time showed deponent a revolver that she had *for that purpose,*" and he then said that he had taken the revolver at that time and still had it. His affidavit leads to the inference that the revolver was Mrs. Pfender's and that she showed him the revolver, stating that she *intended to kill* her husband and that she had the revolver with which she intended to do it, and that he thereupon took the revolver away from her because he was afraid she would do it. He does

not attempt to excuse his affidavit by claiming that it was prepared by counsel and that he did not *fully* realize what was in it. On the contrary, he says that it was *technically* incorrect. We know, if the gardener's testimony is to be believed, that the revolver was never handed over to him but that it *was* handed to Pfender and, if his testimony is to be believed, that it was handed to him and Pfender just before the gardener went to Europe, which was in January, 1927. From his statements, contained in his affidavit, it would also appear that he took this revolver because he was afraid that if he did not take it, Mrs. Pfender would shoot her husband.

Now, the fact is that he did *not* take it; that he left it and the cartridges, which he said were also wrapped up with it, the revolver itself being unloaded, in the possession of Mrs. Pfender, and he permitted Pfender to remain in the house, and Pfender did remain in the house until October 1, 1926, and, then, it is quite apparent that he left, not because he was afraid, but because they could not agree upon terms "of some *amicable* and *private adjustment*" (p. 116). It was not until Dr. Dougherty found that there was "no possibility of reconciliation" (p. 116) and after there had been a consultation between counsel for Pfender and the alienists, Dr. Beling and Dr. Washington, attended by Dr. Dougherty, that Dr. Dougherty urged Pfender, to use his own words, "to leave his wife" (p. 130), and it was after these conferences with these alienists that Dr. Dougherty reached the conclusion that it would not be safe for Pfender to live with his wife. He said (p. 130)—

"Q In your judgment would it have been safe for him to have continued to live with her?"

Objected to. Objection overruled.

Mr. Blankenhorn: He hasn't qualified as a physician.

The Court: He doesn't need to.

A No, it would not."

It was not the production of the revolver which led him to that conclusion, but what the alienists had told him undoubtedly with respect to Mrs. Pfender's mental condition. Yet the court was induced to believe by the affidavit that it was the production of the revolver and that Dr. Dougherty was so afraid of what would happen to Pfender that he took the revolver away from Mrs. Pfender.

The affidavit also is false in that it indicates that, at the interview with Mrs. Pfender, she told him that she intended to kill her husband and that she showed him the revolver which she intended to use for that purpose. That is the purport of the affidavit and its *intended* purport. But when he testified he said no such thing. On the contrary, he said that what Mrs. Pfender had told him was that she "had *thought* of killing him but the thought of taking life was repugnant to her and she had decided not to" (p. 116). And then she stated that she wanted to show the doctor something and brought out the revolver. *There was no statement on her part that she intended to kill her husband and to use the revolver for that purpose.* The doctor's testimony is extremely vague as to what *did* occur. He said (p. 118) on direct examination:

"Q On the first occasion when you saw the revolver that I have offered in evidence, tell us *all* that took place. If I knew what you were after, I would tell you. (The question was in perfectly plain and understandable English.) Mrs. Pfender brought this revolver in a package, in a box, tied up with this white tape, opened it and showed it to

me. When she was coming into the room, I knowing that she was going for a revolver, had a more or less *amusing* thought as to whether she was going to use it on me or not, and I took it, looked at it, broke it to see if it was loaded.

Q Was it loaded? A No.

Q Go ahead. A There was a box of bullets.

Q Cartridges? A Cartridges in the package with the revolver. I looked at it and examined it and *handed it back to her.* She tied it up in the package and held it in her hand, in her lap, during the rest of the conversation, and still had it when I bade her adieu.

The Court: You said that as introductory to this revolver being shown to you, Mrs. Pfender said, 'Wait a minute, I have something I want to show to you.' Did she tell you anything else about the revolver except what you have recited?

The Witness: She said that she had been tempted on a great many occasions to shoot Mr. Pfender, and it was in the midst of that conversation that she said, 'Wait a minute, I have something to show you.' Does that answer your question?

The Court: Yes."

This latter statement that she had said that she had been *tempted* "on a *great many occasions* to shoot Mr. Pfender" (p. 119) is an enlargement of what the doctor had said on pages 117 and 118.

On direct examination, the doctor testifies:

"Q One question I omitted to ask, when Mrs. Pfender showed you this revolver did she tell you whether or not she bought it, and if so, for what use? A She said she had bought it to shoot Mr. Pfender with."

It will be observed that the witness does not testify to any such statement at any time when

he is relating what occurred. It is only when he is prompted and the matter specifically brought to his attention that he injects this statement. It was so he injected it on page 125, after he had been fully examined upon what had occurred and had made no such statement (pp. 118, 119). Note his testimony on page 119, where, in response to questioning of the court as to whether anything else was said about the revolver except what he had recited, which was *not* to the effect that she told him she had bought it for the purpose of shooting her husband, he says that Mrs. Pfender said that she had been tempted upon a great many occasions to shoot her husband, and he further says that it was in the midst of that conversation that she said, "Wait a minute, I have something to show you," and then brought in the revolver.

And it is inconceivable that, if Mrs. Pfender had made any such remark as that she had purchased the revolver to shoot her husband and that she intended to shoot him, that he would not at least have asked for the revolver instead of calmly handing it back to her, permitting her to keep it and permitting Pfender to remain in the house.

Mrs. Pfender testifies (p. 214) as to her conversation with Dr. Dougherty and the incident of the revolver:

"Q Do you know Mr. Dougherty? A Yes.

Q He is your minister? A Yes.

Q Did you send for him after you came from Westport? A I told him about it one evening.

Q You told him about the admission your husband had made? A Yes; he told me to go back and let him talk to him, and he talked with him two and one-half hours.

Q In your house? A Yes, in the living room, whispering.

Q Did Mr. Dougherty ask you if you had a gun in the house? A No, not that night. The next day he came over.

Q He asked you if you had a gun? A Yes, and I made no secret of it; why should I?

Q What did you tell him? A I told him I did; I bought it for protection. He wanted to know what kind of a gun it was.

Q Did you go and get it? A I did. He said, 'I hope it is a safe one.' 'It most certainly is; I asked them to give me the best they had.'

Q When you showed it to him, was it wrapped up? A It was in a box—the box it came in; a little box, as I remember it.

Q In this box? A I suppose that is it.

Q Was it tied up? A Yes, with a white ribbon.

Q Was it loaded? A No, it was not.

Q And after Mr. Dougherty looked at it, what did he say? A He said, 'It is a very fine one.'

Q Did he give it back to you? A Yes.

Q What did you do with it? A I put it back in the box.

Q What did you finally do with it? A I gave it to the gardener.

Q Do you know what he did with it? A I do not.

Q Did you ever see it again until it had been produced here in court? A Never.

Q Is that the only gun you have ever had in the house? A I guess so.

Q Were there in fact burglaries in that neighborhood? A There were; there were two.

Q Had the gardener asked you for firearms? A Yes, he had."

It is apparent, I submit, that Mrs. Pfender is telling the exact truth with respect to this incident and that Dr. Dougherty is not. In the first place, Dr. Dougherty tells one story in his affi-

davit, and quite a different story in his testimony. In the second place, it is quite reasonable to suppose that, if the revolver had been produced under the circumstances indicated by Mrs. Pfender, Dr. Dougherty would have handed the revolver back to her and permitted her to keep it as, in fact, he says he did, whereas, had it been produced under the circumstances under which Dr. Dougherty says it was produced and had the statements been made which he says were made it would be reasonable to suppose that he would have demanded the revolver from her or would at least have asked her for it. Apparently, that this would be the natural thing was recognized at the time the affidavit was drawn and was what the doctor deliberately swore *had* happened, whereas, in fact, it had *not* happened and *he knew it had not happened*.

Again, it would be reasonable to suppose, if the revolver had been produced under the circumstances indicated by Mrs. Pfender, that Dr. Dougherty would continue his efforts at *reconciliation*, whereas, if the revolver had been produced under the circumstances as detailed by Dr. Dougherty he would have immediately advised Pfender not to return to the house and Pfender would not have returned to the house. But no such advice was given to Pfender and Pfender did not leave the house until an effort at an *amicable adjustment* had failed and Dr. Dougherty had consulted with the alienists, Dr. Beling and Dr. Washington, *whereupon* he advised Pfender to leave.

Dr. Dougherty is not entitled to the credit given him by the Vice-Chancellor in his conclusions (p. 53): "The testimony of Dr. Dougherty, the rector, with reference to this episode cannot

be doubted and I place the greatest reliance in it."

Dr. Dougherty's testimony is to be weighed precisely the same as the testimony of any other witness. Indeed, it should, I submit, be weighed much more carefully because he was the rector of both parties, the friend of both for over seven years; the wife had been a constant Christian worker, and I submit that he should have been extremely careful of everything that he said, whereas the facts show that he has acted throughout as a bitter partisan of the husband.

His testimony contradicts his affidavit and his explanation is that the affidavit is *technically* incorrect. He testifies in one breath that, "strange as it may be," he cannot remember the *exact* circumstances under which the revolver came into his possession, and immediately thereafter informs us that the gardener handed it to him. His testimony with respect to the circumstances surrounding the production of the revolver by Mrs. Pfender is not consistent with his conduct at the time, whereas, the testimony of Mrs. Pfender as to the circumstances is consistent with his conduct at the time. He participated in the conferences with the alienists. It was to him, not to Pfender, that Dr. Beling handed the revolver which Dr. Beling had obtained when he saw Mrs. Pfender, which revolver belonged to Mrs. Pfender's son, who had been in the navy during the war. It was in his home that Pfender stayed after he left his wife (p. 130).

Dr. Dougherty's profession of ignorance with respect to profanity and slang does not ring true. He had testified that he had never seen the slightest evidence of either brutality or profanity in Pfender (p. 114) and he had painted

Pfender as a most calm, gentle and lovely man. He is asked to read the letter written by Pfender to his wife (Exhibit D. 10, p. 263) which contains the expression: "I am awfully sorry you are having so much trouble with the help, etc. It is most unfortunate that we took that dirty little b—, Margaret, but what could you know about how things were going to turn out." And he says that there is nothing improper in that and that he *hasn't the least idea in the world what it means.*

Nor does his statement that it was *malign and sinister* for Mrs. Pfender to be jealous of a young woman whom her husband told her he had taken out to dinner on at least six different occasions and that he saw no reason why a married woman in love should object to that, ring true. Nor does his profession of ignorance as to why Mrs. Pfender wanted to arrange a meeting with the young woman employee whom she suspected, ring true (p. 130).

It may be that Dr. Dougherty did not object to his own wife going out horseback riding with Pfender and that he had a "rather *amused* idea of the jealousy" first starting "when my wife invited Mr. Pfender to take a ride in the park one day and he refused with so much embarrassment" (p. 123). It may be that jealousy is *never* justified and that a married woman has no right to object to anything which her husband may do unless she catches him in the act of adultery. But life is not lived that way. Many women are made jealous by much less than occurred in this case, and, while the jealousy may not be justified, it, nevertheless, cannot be called "malign and sinister."

Pfender *did* go out horseback riding in the park without his wife. He did, upon at least one occasion, meet a young "a certain woman, a young girl she was" (p. 77). In response to his wife's statement to him that he was riding in the park with other women, he says that he told her about this occasion (p. 78). That he was not considered as adverse to riding with other women is quite apparent for, otherwise, why should Mrs. Dougherty ask him to ride with her (p. 123)?

Mrs. Pfender says that during the summer of 1926 she was away at Westport alone from June on. Pfender did not come up excepting over the week-ends, contenting himself with writing the loving letters which have heretofore been referred to (p. 254, etc.). He came up on the weekend of August 7th. She says that he cursed and swore at her during the afternoon and that finally she said (p. 203):

" 'Now, Carl, I want you to tell me the truth; you haven't been treating me right for some time, and you are writing lovely letters; why do you curse and swear at me when you come up and treat me in this manner? I cannot understand. You don't want to take me anywhere or do anything for me, and I cannot endure this loneliness up here.' I said, 'I want you to tell me the truth; is there another woman in the case?' And he hesitated a moment, and he said, 'Yes, there is another, Lillian.'

Q What else did he say? A I said well it was a shock to me. I said, 'How long has this been going on?' And then he was very nervous and he didn't hardly know what to say. He was taken by surprise, and he said that it had been going on for five weeks only first; and then he stretched it eight months, and then he said he had been interested in her for eight years.

Q What did he say had happened? A He said he had met her at Jersey City in the car evenings and taken her out riding on the Jersey City Boulevard until very late, and didn't get home until late in the morning, and he had hugged her and kissed her and taken her to dinners and luncheons, and he had bought her all kinds of presents, naming the last two, which was some kind of scarf, at Christmas time, and a wrist watch.

Q Did he say who the young woman was?

A Yes.

Q And was she an employee in his office?

A He said she was employed in another department over which he had no control, but I found out afterwards—

Turning to Pfender's testimony, we find him saying (p. 78) that he told her of having been driving with a young lady and of having taken dinner or lunch with someone who was employed in the office and on p. 79 he says:

"In August she became very much worked up. It was after I had this *episode* about this young woman, and she persistently nagged me and found fault with me and wanted me to bring a meeting around between this young person and herself and myself so she could settle the matter."

And (p. 80):

"It was after I had told her and admitted that I had gone with this young woman, one of the employees in our office, and I had told her that I had on a warm evening when we had been working at the store, I had taken her on a ride. All of these places were the most public places, where other people were around."

Although, from his response to his counsel's question on p. 78, the inference would be drawn that he told his wife about taking this young lady out *every time* he took her out, he testifies, on p. 83, that the time he told her was on Au-

gust 7, 1926, at Westport. He had never told her before, although there had been several of these incidents (p. 83). He told her of four or five, possibly six, occasions.

His explanation as to how he came to tell her was that she accused him of it and told him she had had people follow him and had checked up on the gasoline in the car and knew that he had been out (p. 84). She denies that she did this and her explanation as to how it came about is much the more reasonable. Something which Pfender did led her to attempt to find out what the trouble was between them.

Unconsciously, this is admitted by Pfender, for he says (p. 84):

"Q She had been asking you, had she not, what was the difficulty between you? A What was the difficulty between us?"

Q Yes, she had been asking you that? A Not that I recall. *She wanted to know what was the trouble in the spring.*"

Something in his treatment of her in the spring (see his letter of May, 1926, p. 251) led her to suspect that he was having some association with some other woman, and her suspicions were verified by his own words when he told her on August 7, 1926. He, of course, denies that he told her, as she says, that, when he had taken this young lady out, "he had hugged her and kissed her"; but he admits that he said that he had taken the young lady out to dinner and on automobile rides.

As will be hereafter indicated, it is clear, I submit, that what he actually told her was what she says he did. But, however that may be, what he admitted he told her was sufficient to arouse the jealousy of any woman. I do not mean to insinuate that there was anything wrong in

Pfender taking the young lady to dinner or on automobile rides. I *do* mean that no man has any right to take a woman, other than his wife, upon *several* occasions to dinners and on automobile rides and not tell his wife anything about it at the time, and then, when his wife finds it out upon pressing him, to expect her not to be jealous. It was not the taking of the young lady to dinner or on automobile rides but the *secrecy* of it which aroused, and justly aroused, the wife's jealousy.

It must be considered as a conceded fact in the case that the revelation made by Pfender to his wife on August 7, 1926, coming as it did after she had been in Westport alone, except over the week-ends, from June, and after she had received during that period of time these loving letters, affected the wife to such an extent as that she was seriously ill.

Pfender concedes that she was ill (pp. 89, 90) and that they immediately came home. He deprecates her illness. He is asked whether she fainted. He replies, "Yes, she was—I *don't* know whether she fainted; she was lying there on the bed, I know."

Mrs. Pfender says that, after her husband had told her about taking the young lady out to dinner and on automobile rides, she went downstairs and saw Ross, who was present, and told Ross, in the presence of Pfender, what had been said, and that (p. 205):

"In Mr. Ross' presence, he admitted that he had only been going with the girl five weeks, taking her for rides on the Jersey City Boulevard and to theatres and restaurants; he had only hugged and kissed her, and that there were no sexual relations. He said that right before Mr. Ross. He said there had been no sexual relations as yet.

He said, 'I have never had anything to do with any other woman sexually.'"

Ross was called (p. 162) and states that he visited the Pfenders in August of 1926. He is a reluctant witness, but he says that Mr. and Mrs. Pfender had been upstairs and both came down and both made a statement to him. He says that Mrs. Pfender told him

"that Mr. Pfender had confessed certain things to her.

Q Did she say what they were? A She said that he (Pfender) had admitted going out in an auto to restaurants and probably to theatres, but I have no recollection more definite than that.

Q And did Mr. Pfender reply to that? A I think Mr. Pfender had admitted certain statements that Mrs. Pfender had made."

and (p. 163)

"Q In your presence? A Yes, with reference to the young woman.

Q With reference to the young woman? A Yes.

Q And then what happened? I mean, did you stay there? A Yes, I was there that night and the next day, and Mrs. Pfender had threatened *to bring proceedings for divorce*, (this indicates that more was admitted than the taking of the young lady out to dinner, etc.) and I urged her to give serious consideration to that, and Mr. Pfender also. And then they went upstairs again, and after a while *Mr. Pfender came down and said that Mrs. Pfender had fainted* (Pfender does not know *now* whether she fainted or not), and wished to know what I would advise to do. I said that he should try to get a doctor, and he did—went out and got a doctor."

and (p. 164)

"Q Do you know how long Mrs. Pfender was unconscious when she fainted? A Mr. Pfender had come down a couple of times, I

should think fifteen or twenty minutes had elapsed between the times that he had come downstairs, and he came down once and said something to me about the condition of affairs, and then came down later and said that Mrs. Pfender had fainted, and he went out and got a doctor, but whether that was Saturday or Sunday, I have no recollection."

He is then asked on cross examination as to whether Pfender admitted or confessed any wrong doing or immorality or anything of that kind, and the witness when pressed by the court said (p. 165):

"The Witness: No; he distinctly said that night that there was no *wrong action* at all on his part, and that *he would be very willing, if Mrs. Pfender would not bring this suit for divorce, to break off all relations with the young lady.*

Q And did he not say that he had merely taken dinner with her and an automobile ride to public places where there were many other people? A That is as I understood it.

Q Was there any question whatever of his, in your presence or at any time, admitting any wrongdoing or immorality whatever? A No; he said distinctly that night that there was no *wrongdoing.*"

On re-direct examination he is asked whether Pfender did not admit that he had *kissed* the young lady, and he says he has *no recollection*, and (p. 166)

"Q Didn't Mrs. Pfender say that he had admitted it to her? A *I don't know; I don't remember.* Mrs. Pfender made various statements, but I don't remember anything definitely except as to the auto riding and the theatre and restaurants. *She may have made such a statement.*

Q And didn't he say that he might have kissed her but that that wasn't wrong? A *I don't know* whether he made such a state-

ment or whether she made the statement to me.

Q That statement might have been made?

A *It might have been made.*

Q There at Westport? A Yes, but I have no recollection of it.

Q Did he say that he had put his arms around her? A Not that I remember. *Mrs. Pfender had made various statements about what Mr. Pfender admitted, I think, but what those statements were I have no recollection beyond those three items.*"

Dr. Harris was the physician who was called and he testified (p. 157) that he treated Mrs. Pfender at Westport for a fractured rib in July, 1926, and was called to visit her again on the 8th of August, 1926, on Sunday, and (p. 158)

"A When I came, her condition wasn't clear to me; she was in a state, I should say, *semi-conscious*, but it was apparent from reflexes that were present that *she was not completely* conscious, and after several attempts to elicit answers to my questions, I succeeded and got a story which made me realize that the condition *was a nervous attack.*

Q While you were examining her, was Mr. Pfender there? A As I recall it, Mr. Pfender was in and out of the room; he was in the building, yes.

Q And was Mr. Ross also there? A I think Mr. Ross came into the room; that I wouldn't say for certain. I know he was in the building, too; I think in the next room.

Q Did you say anything to Mrs. Pfender, speak to her? A Oh, yes, I attempted to find out what the cause of the condition was, of course.

Q What did you find out? A I found—in the first place, I had a great deal of difficulty eliciting any story; *I found she was very reticent about talking about it.* I explained to her that I couldn't possibly make a diagnosis and do anything for her unless she would co-operate with me and tell me

what the situation was. In other words, *what she had on her mind and worrying her.*

Q Did she tell you? A Yes, finally."

He was not permitted to tell (pp. 159-160) what she told him but finally was permitted to testify as to what he told Pfender, and he said (p. 160):

"A Why, my recollection of that is that I told Mr. Pfender that Mrs. Pfender had said that she was very much upset because of the *revelations* that he had made to her, either in the night or the night before or early that morning; I am not certain which.

Q Did you say what the revelations were?

A *I told him that the revelations had to do with an affair with some woman.*

Q What did he say? A As I recall it, Mr. Pfender simply replied that the situation was *exaggerated; that it wasn't as bad as it seemed, or words to that effect.* Naturally, this is a year and some months ago.

Q Did you determine the cause for Mrs. Pfender's condition? A *I thought that was sufficient, because I felt that the nervous shock of a sudden revelation of that nature was quite sufficient cause.*"

Although the physician, who should know, says that the revelations were sufficient to bring on this nervous attack the minister thinks they were wholly unimportant.

The attention of Dr. Harris was directed to the fact that Mrs. Pfender had also been informed, about the same time, as to some difficulty that her son had had about a woman, but he said (p. 161):

"Q Would you say that it was the combination of the two events that caused her condition, or was one sufficient? A I think it was quite sufficient. *The event that was uppermost in her mind was the discussion of Mr. Pfender's activity.*

Q The revelation as to the woman? A Yes, that seem sufficient.

The Court: Might either or both have been sufficient?

The Witness: I should say so."

Dr. Harris says that Mrs. Pfender was of a neurotic type and highly nervous (p. 161).

The life of the husband and wife up to 1926, so far as anyone who knew them testified, was cordial and close. Dr. Carson, the rector of Christ Church, Ridgewood, New Jersey, knew Mr. and Mrs. Pfender for about eleven years. They were parishioners of his church from 1916 to 1920. He said (p. 172):

"Q What would you say as to Mrs. Pfender's attitude toward her husband and Mr. Pfender's attitude toward his wife? A During the period that I intimately knew them, that is, when they were parishioners of mine, *I would say that their relations then were splendid, fine, between husband and wife; I wouldn't ask for anything better.*

Q Did you ever hear Mrs. Pfender threaten her husband with any bodily harm? A Never.

Q Did you ever hear her complain of his conduct? A No.

Q Did you ever hear her complain of his personal appearance? A During those four years that they were parishioners of mine?

Q During any time that you knew them? A Never.

Q And what would you say of Mr. Pfender's attitude toward his wife? A During that time, so far as I could see, he was treating his wife properly."

He saw them as late as 1925 and observed no strained relations (p. 173).

Mrs. Price, who lived next door to Mr. and Mrs. Pfender on Ridgewood avenue for about six years, said (p. 175):

"Q Can you tell me when was the last time that you were in their home? A I

have been in their home many times, and I have been in their garden; they have a very beautiful home and a very beautiful garden, and Mrs. Pfender has always been exceedingly interested in her home and in her garden and in her pets, and I have been in the home and I have visited with her across our hedge. I have seen Mr. and Mrs. Pfender many times in their garden together; I have seen them play croquet.

Q You say you saw Mr. and Mrs. Pfender often in the garden? A Yes."

She tells of an incident at Christmas, 1925, when she called and Mr. Pfender's sister was present. While they were there, Pfender came home and Mrs. Pfender went out to greet him and everything was cordial (p. 176).

Dr. Halsey (p. 177) testified to having treated Mrs. Pfender professionally during the month of March, 1926. She was ill and confined to her bed about ten days (p. 179). On occasions when the doctor called he would find the door open and walk in, and on two occasions he attempted to get in and could not, and came back. He saw no one, and (p. 178),

"Q Did you see anyone there in the house taking care of Mrs. Pfender? A No.

Q So far as you know, she was there alone? A As far as I could see, yes."

There is no doubt but that Mrs. Pfender has been ill since 1924. She was in the hospital in 1924 for neuritis and sciatica. Her husband took her to the hospital (p. 187). She was ill in Westport during 1924, and was in bed for some six weeks (pp. 188-189). Pfender admits her illness in 1924. He says that she was ill in May (p. 65). It was at *this* time, after she had insisted upon leaving the hospital (p. 65), that, in a taxicab, while leaving, her husband says she became violently angry and hit him in the face with her fist

as hard as she could (p. 66). She denies any such striking (p. 188). Sick as she was, her husband's desires are, apparently, to hold her up to the conduct of a well woman. She was ill all during 1926 before she went to Westport (p. 201). Although her husband desires to deprecate her condition of illness at the present time, in the letter, D. 2 (p. 251), which he slipped under her door, he said:

"It is about time you realized that on *your health* depends your happiness and mine, too. *I have been at you for several years to take treatments and get yourself well before it was too late* but you persist in neglecting yourself to try and keep this big house going, and you have not been successful. \* \* \* You seem to think that you are the only one who has nerves."

In March, 1926, she was ill for five weeks with the grippe (p. 199); she was without help (pp. 199-200). She is corroborated in this by Dr. Halsey.

She says that, during that time, her husband tried to get her to sign all her rights to the real estate in Glen Ridge and New York State. The property stood in their joint names. Pfender brought some papers for her to sign (p. 200), and, when she refused to sign, he became angry. He does not deny that he asked her to sign these papers which would give away all of her rights—*a request made on her when she was ill*. It was while she was ill that he slipped the note, D. 2, under her door (pp. 201-202). That he broke down the door when she was in this condition of illness, he concedes. The dependence which can be placed upon Pfender's word is well illustrated by the testimony at page 93:

"Q As a matter of fact you wanted her to sell the Glen Ridge house and get out and

you would then give her an income and make her independent? A No.

Q Isn't that so? A No, it is not so.

The Witness: May I add something to that?

Mr. Blankenhorn: No."

Mr. Blankenhorn then showed Pfender Exhibit D. 2, which is the letter slipped under Mrs. Pfender's door in May, 1926. The witness had undoubtedly seen the sheets in Mr. Blankenhorn's hand and, realizing what they were—realized that they contained a contradiction of what he had just said and he attempted to add something to his statement. After having been shown the sheets (p. 94) he is asked:

"Do you still say that you didn't want her at that time to separate from you and take \$6,000 a year? A Absolutely no; she suggested that she might continue right in the house there, and I said that it was a very expensive proposition to keep that house running."

Turning to the letter, Exhibit D. 2, it contains the following statements:

"Now you still persist in keeping it (the house) and refuse to sell, and in so doing you are making sure of losing any chance of happiness that is left. I deny that I have been unreasonable and have not given you time to secure help if they can be had. The housework could have been left for two or three days at a time if necessary and the trip to the city would not have been any harder for you than the care of this big house. \* \* \* It has come to the point now where you will have to decide what is to be done. I cannot and will not continue to live the way I have for a long time. You seem to care more for your home, your garden and your pets than you do for me or my comfort and happiness and if this is the case, the sooner we settle matters the better.

\* \* \* It is not a case of my throwing you on the world without means to live and be comfortable. This home represents an actual cash investment of \$90,000 at the least and the furniture at least \$40,000 and if it comes to a break you would have an income of 4 to \$5,000 from the proceeds of the sale and I would try to make a settlement that would assure you an income of at least \$6,000 a year or \$500 a month which would make you independent for life. If we sell the house, we could store furniture and you could go to California or travel where you wished for a while and get a good rest or take treatments and recover your health. Then later we could try an apartment for a time. \* \* \* You know it is the only sensible thing to do to sell this big place which has gotten on my nerves so that I cannot stand it. It will probably take a year or more to sell it and now is the time to start \* \* \*."

He then indicates what he will do if she refuses to sell when he says:

"If you insist in keeping it and I allow you \$1,000 a month, you will have to pay all the running expenses of the house, taxes, coal light gas water provisions repairs replacements, household supplies furnishings etc. and all the help both inside and outside hire and fire the help and keep the place running in a proper manner so that there is some pleasure comfort and happiness to be gotten out of it. You pay for clothes—all other expenses yourself."

He states that if she desires to try Westport

"for a season in the cottage that I have paid the rent for and see how you like it, being alone during the week from Sunday night to Saturday morning, at the end of the season if it is a success I will then consider building a simple comfortable comparatively inexpensive bungalow or cottage for summer use."

The most significant phrase in that letter is the following:

*"Yes, I have changed and I have had good cause to change and I feel as if I had aged ten years in the last year. If your home and your stubborn ways mean more to you than anything else in life, keep right on as you are going."*

This is an admission on his part that he had changed, and it is an admission that she had taxed him with the change. It is corroborative of her statement that she observed the change and *did* tax him with it. He says (p. 93) that it was in 1926 that his health began to be affected "when she began to be unusually \* \* \*." It was in May, as he concedes, that she began to tax him with paying attentions to other women. As the record abundantly shows, she was an ill woman. She went to Westport in June. Her husband had apparently become reconciled and was treating her with consideration; although he was visiting her only over week-ends, he wrote her the loving letters all during the summer; then, on August 7, 1926, he informed her of his having taken the young lady employee out to dinners and upon automobile rides, and much more, if her testimony is to be believed, corroborated as it is, as I insist, by Ross.

She broke, and it is no wonder that she broke. She became jealous, and it is no wonder that she became jealous.

Notwithstanding the statement of Dr. Dougherty that he considered her jealousy under the circumstances "malign and sinister," it is precisely what would be expected from a well woman, and certainly what would be expected from an ill woman.

Having noticed the change in her husband in May, having taxed him with it, and having received the letter, D. 2, conceding that he had changed, then having gone away and received these loving letters, and then, being informed by her husband of these surreptitious relations, innocent though they may have been, yet concealed or not disclosed, what else was there for her to think except to attribute the change to his loss of interest in her and his interest in some other woman?

That the effect of what occurred broke her and caused a severe nervous condition, is clearly proven by the doctor's testimony, as well as by that of Pfender himself, and by that of Ross. It was when she was ill that he broke the doors, and yet his conduct in so breaking doors which had been closed by an ill woman, is justified by Dr. Dougherty in the words (p. 131):

*"You still thought that he was afraid of her? A If my wife locked me out of the house, I would break down any door in it."*

According to the doctor, no consideration whatever is to be paid to a woman's condition of health.

Why did Pfender tell Dr. Beling (pp. 152-153) that

*"he had told his wife that he had taken somebody out, simply to satisfy her, because she was after him all the time, and he thought that that perhaps might satisfy her, and he also told me that he recognized how foolish she had been"?*

Dr. Beling goes on to say (p. 153) that Pfender told him, "he did go out with some woman, I think, if I recollect rightly, but I don't remember the circumstances, but he said that he had taken someone out to dinner once, or something

like that." Pfender says that this is, in effect, what he told his wife in Westport on August 7, 1926 (p. 80), but his wife says that he told her much more (pp. 203, 204) and Beling says that Pfender told him that "he had told his wife that he had taken somebody out *simply to satisfy her* because she was after him all the time and he thought that that perhaps might satisfy her, and he also told me that he recognized how foolish she had been."

But what Pfender did in fact tell his wife was the truth, it was not told to his wife simply to satisfy her but because it was the truth. According to Dr. Beling's testimony there was *something* told the wife which was *not the truth simply to satisfy her*. What was it? The wife tells us what it was, *i. e.*, that, "he had hugged and kissed her (the other lady) and taken her to dinners and luncheons and he had bought her all kinds of presents, naming the last two, which was some kind of a scarf at Christmas time and a wrist watch" (p. 204). Pfender admitted everything except that he had had sexual relations with the young lady (p. 205).

Of course, Pfender will not admit that he kissed and hugged this young lady and he will not admit that he told his wife so, but the testimony of Beling indicates that he must *have* told his wife *something* which was false for the purpose of satisfying his wife. It could not have been the statement that he had taken this young lady out to lunches and on automobile rides, for that was the truth. What was it?

The admitted condition of Mrs. Pfender after she was told whatever she was told by her husband on August 7, 1926, indicated that he had told her much more than what he admits now he told her.

Dr. Dougherty refers to the occasion in 1924 at Westport about which Pfender testified at p. 66, to the effect that he had asked Dr. Dougherty and some of the boys to go out with him so that he could learn about a motor on a boat which he had and that, when they returned, Mrs. Pfender who had not been invited, was angry and started to find fault with the servants and compelled him to take them to New York that day in the train and that he thereafter received a telegram from Dr. Dougherty "which I didn't receive" but as a result of which he went back to Westport and met his wife at Saratoga she being on the way home, at p. 123 of the record. Dr. Dougherty says that Mrs. Pfender was asked to go (p. 123)—

"as it would be the first ride in the boat, as there was some talk of it being a fishing boat, as he bought it with that idea. We asked her to go with us and she said she would rather not, *but in the most gracious and genial way*—I don't know whether this is relevant or not, *but Mrs. Pfender had been most kind and generous and perfectly lovely to us*, who were living near neighbors to them, and indeed we were their guests, *for Mr. and Mrs. Pfender had given us the rent of the cottage for that summer*, and I went with, I think, one of my young men's sons and Mr. Pfender, to try out the motor. The next morning Mr. Pfender, Mrs. Dougherty and myself went fishing early before breakfast—I imagine it was half-past four or quarter-of-five in the morning. When we came back—Mr. Pfender having told us that he must be back for an eight o'clock breakfast—I cleaned some of the fish that we caught and took one of them over to the back door, Mr. Pfender's back door, and Mr. Pfender was there and said he didn't want it, and he said it in such fashion that I knew he was a very different type of person from what he had been for three-quarters of an

hour before, evidently very much wrought up about something. That evening I noticed that there seemed to be nobody about the Pfender cottage and remarked that the place looked deserted. The next morning there was no one about, but there were papers—brown papers over all the windows, making the house look like a place that had been boarded up or closed up for the season. I went over to the house and knocked on the door and got no response. I went to the back of the house and knocked at the door and there was no response, and it was that evening or the next evening that I saw the big collie dog, and so realized that there must be someone there, and finding that Mrs. Pfender was in the house alone, I, if it was permitted, could say what people told me, I could tell you how I found that out.

Mr. Lum: No.

A (Continuing.) On finding that Mrs. Pfender was in the house alone, I sent Mr. Pfender a telegram—I didn't know whether he knew that the servants had gone or not; *I felt very anxious that she should be alone in the house.* I sent him a telegram stating that there appeared to be no servants and that Mrs. Pfender was alone. I thought that. In reply to that a telegram came and I supposed it was in reply to my telegram, but the telegram was addressed to Mr. Pfender's cousin, Adolph Pfender, and then I discovered that Mrs. Pfender was leaving for home, Glen Ridge, and Mr. Henckel gave me—stating that he didn't know what to do with them, five or six 45-cartridges, and I took them and threw them in Lake Champlain, probably the safest place for them. Mrs. Pfender left for Glen Ridge, as Mr. Henckel said a little while ago, and Mr. Adolph Pfender, the cousin, sent the telegram that I wrote to Mr. Pfender, Mr. Carl Pfender, telling him that Mrs. Pfender had gone and that he had better try to meet her on the train, and I sent that telegram myself so as to catch him on his train coming north

and he could meet Mrs. Pfender at Saratoga going south. My only interest then was to help out both parties in what seemed to be a very terrible situation."

Henckel (p. 69) also testified to this incident. The Pfender cottage adjoined his. On the day after the 4th of July he observed that the house appeared to be vacant. He went over and found Mrs. Pfender. She was very angry and refused to admit him, but he finally said (p. 71)—

"I spoke to her quietly, and then finally she said, 'Well, come in.' She said, 'Will you help me to get some of these things out?' She said that the whole night before she had been up all night before packing all her stuff up. Personally, I don't see how she could have done it, but she did do it. Then she asked me if I would look after the checking of these things. She asked me if I would get her tickets down on the train, and gave me the money to get her tickets, which I did. She said she was going over to that train, if she had to walk. I said it would not be necessary for her to do that, because I would be glad to take over myself, which I did, together with the rest of the baggage that she had. When she was in the house she asked me to go upstairs for a moment; I went upstairs with her there. She said, 'I am not without protection here, I can take care of myself,' and she opened the drawer and took out a revolver. I was concerned about that for a moment, because she was still in a very *agitated* frame of mind. She said, 'I can take care of myself,' and I asked her, I said, 'Let me see that a moment, won't you?' She said, 'No.' I said, 'Let me take it just a moment,' and she handed it over to me, and I immediately broke it and found it was fully loaded. I ejected the shells—took them all out; she said, 'Give my gun back.' I had no right to keep it from her, so I returned it to her, but I kept the shells. (Is it conceivable that if he had taken the shells, after Mrs. Pfender in her excited, agitated

condition had demanded the gun back, she would not have protested but he tells us nothing of any such protest.) I think it was either thirty-two or thirty-eight calibre revolver. They had had a boat. The boat had been brought up there, and she said to me, 'You can see that Man-of-War out there,' she said, 'I was going to burn that boat,' but she had been fearful of it for fear that in the covering it with kerosene, she might set fire to herself, and that is the only thing that persuaded her from doing it.

Mr. Blankenhorn: Did she say that?

The Court: I understand he is telling the court what she told him.

The Witness: What she told me.

In addition to that, she said that she had been ill, and the trip up and down—it was rather a long hill, perhaps 150 to 200 yards or more, that she had to go down, and rather steep to come up, and she said that might be too much for her, she didn't know whether she could do it or not. Then coming back. I took her in the car and took her over to the station, and at the station *she appeared perfectly calm; she quieted down* and spoke with the attendants around the depot, and I saw her on the train, apparently in a very *calm attitude of mind.*"

Henckel says on cross examination (p. 74) that he always thought highly of Mrs. Pfender and that was the only time he ever saw her angry. He says that, on the morning of the 4th of July when they were all together, there was no appearance of any estranged feeling between Mr. and Mrs. Pfender. He says that when he saw her the next morning he knew that she had been alone in the house the previous night (p. 75)—

"we were concerned about her, because we didn't know whether she had any food in the house or she didn't have any food in the house.

Q Did you know where her husband was?

A No; why should I."

Mrs. Pfender gives her version of what occurred in July, 1924, at Westport, testified to by Dr. Dougherty, Henckel and Pfender, on p. 188, etc., of the record. She says they had Japanese servants. Pfender corroborates this. Mrs. Pfender says that the servants "refused to keep the fire going and there was no hot water for the baths that were necessary; I had sciatica (there is no doubt of this) and couldn't bathe in the icy cold spring water, and he said, 'Well, I told you how independent they were; they wouldn't even give me a pitcher of hot water in the morning.'" Pfender told her to discharge them. Pfender went fishing and Mrs. Pfender told the servants that they could leave on Monday. They insisted that they were going on Saturday. Pfender was angry. He immediately took the servants away and went home. Mrs. Pfender says that there was no difficulty between them at that time. He kissed her good-bye and said, "Dear, I am sorry to leave you alone because I know you are not well and I will try and get help and send them up to you."

She says that Henckel came to the house and that he drove her to the train. She denies that she threatened to burn the boat. She says that there *was* a conversation about the boat with Mrs. Henckel (p. 192). She says (p. 193) that on the way down she met her husband at Saratoga and he was surprised to see her, that he was pleasant and there was no difficulty between them.

She denies that she had a revolver at Westport. And I submit that the fact that it is unreasonable to suppose that, under the conditions described by Henckel, Mrs. Pfender would not

have protested had he taken the shells, stamps the story of Henckel and Dr. Dougherty as false.

There is no doubt but that Mrs. Pfender was ill during the spring and summer of 1924. Her husband says so (p. 64). She was obliged to go to the hospital.

Her husband admits that she had trouble with the Japanese servants (p. 67) but he attributes the difficulty, not to the Japanese servants and their conduct, but to Mrs. Pfender's anger because he had taken Dr. Dougherty and some of the boys out in the boat for the first ride without inviting her. What connection there was between this fact and the Japanese servants does not appear although it is conceded that the servants left.

In any event, whatever happened in July, 1924, was smoothed over and the relations between the parties became so close as that the husband, in the summer of 1926, wrote the affectionate letters (p. 251, etc.).

Mrs. Pfender states that the larger one of the two revolvers belonged to her son (p. 211) and there is no dispute with respect to this. Her son was in the Navy during the war (p. 213). She says that her husband "kept it under his pillow for five or six years from the time we had an attempted robbery in our house" (p. 212). She says that, after her husband left, she found it in the bottom chiffonier drawer and that when Dr. Beling called on her he asked her whether there was a gun in the house and she said that there was in the storeroom and went and got it and turned it over to him (pp. 212, 213). Dr. Beling says that he did get it from her (p. 151). He also says that, at first, she denied that she had a revolver, "then I was very much afraid that she

might do some harm, and she had *notions* that her husband was not treating her right."

The smaller revolver she says she bought in September, 1926, "because there were burglars operating in the neighborhood" (p. 213). She says that she told her husband about it and she also says that, when she showed it to Dr. Dougherty, she told Dr. Dougherty that she had bought it for protection. This revolver she handed over to the gardener (p. 215). There is no denial that there had been burglaries in the neighborhood, as stated by Mrs. Pfender, and it is a matter of public knowledge that there was an epidemic of burglaries and hold-ups about that time, which epidemic has not completely subsided at the present time.

No criticism is made of the fact that the gardener seemed to think that *he* needed a revolver.

Pfender says that he never owned a gun. He said (p. 81):

"Q Did you ever buy or own a revolver in your life? A Never did I own a revolver in my life except one that was bought at her earnest solicitation after I repeatedly told her that I did not want a revolver in the house.

Q When was that? A That was, I should say, around 1921 or thereabouts, and that revolver was bought with the express purpose of giving it to the gardener.

Q Was it given to the gardener? A It was given to the gardener, and he had it. I never owned a revolver of my own in my life."

And yet there is found in Pfender's pocket memorandum book, the following entries during November, 1923:

"November 12, 1923 Colts 38 U. S. A. Revolver."

"November 13, 1923 Colts 38."  
 "November 14, 1923 Colts 38 U. S. A.  
 Revolver cleaner for 16 gauge shot gun."  
 "November 17, 1923 Revolver."

and on the same day:

"No. of Ford car that took Raffael's trunk  
 X55056 N. J. stout young Italian."

from all of which it appears that Pfender purchased a revolver in 1923, in addition to the one he had purchased in 1921, at about the time when the gardener had left, or was leaving for Europe; and again on November 1, 1924, we find the memorandum in his pocket memorandum book "Revolver permit."

There is no proof that Mrs. Pfender ever threatened Pfender that she would shoot him or that she ever exhibited the revolver to him. He testifies to the contrary (p. 92).

The only proof consists of the words put into her mouth by the witness Dr. Dougherty.

Mrs. Ida Conklin was produced by petitioner (p. 132). She was the housekeeper for Mr. and Mrs. Pfender and was in the home from June 22, 1926, until December, 1926. She says that Mrs. Pfender told her that she thought "that Mr. Pfender was trying to poison her, as he had had different bottles of things, and that he would get a bottle and then he would put part of it in another bottle and fix it up for her and want her to take it, instead of taking out of the whole bottle" (p. 133). She saw the revolvers but she does *not* testify to any statements made by Mrs. Pfender to *her* as to what she intended to do with them, although Pfender said that he thought that Mrs. Conklin told him of these threats (p. 247).

When the testimony is sifted, we find that no one heard any of these threats except Dr. Dougherty.

Notwithstanding the denials of Dr. Beling, Dr. Washington, Dr. Dougherty and Pfender, there is no question but that the entire party went to Mrs. Pfender's house, where she was alone, at night, armed with a commitment for the purpose of taking her to an insane asylum. I have already examined the testimony with respect to the signing of the commitment. There is no question but that such a commitment was in existence signed. Pfender admits he signed some papers at the request of the doctors. The doctors deny that they made a request that he sign any papers. But that such a paper was in existence is indicated by the statement made by counsel for Pfender on page 88, when the paper was called for:

"Mr. Lum: I have not got it; it is in the hands of the doctor." (The doctor says it isn't.) "Dr. Washington and Dr. Beling are both available and can give you their opinion; it never was filed.

Mr. Blankenhorn: Will you state what the paper was, Mr. Lum?

Mr. Lum: I cannot tell you; I don't recall it. *At any rate, they signed; it was their opinion that the woman was not mentally competent in my judgment; I don't recall the detail. They have it; you can call for it.*" (It was called for and the doctors say this paper was never in existence.)

"Mr. Blankenhorn: And provided for her commitment?"

Mr. Lum: No, nothing filed."

Of course, nothing need be filed. The commitment is on blanks and nothing is filed until the patient is taken to the asylum.

Simandl was shown the commitment duly signed (pp. 154 and 155). He drew the attention of Mr. Lum to the fact that more than ten days had expired after the making out of the paper to which Mr. Lum replied, "Why, if we wanted to use this paper, we could have." That testimony is not contradicted.

Why the secrecy with respect to this paper?

Mr. Lum says (p. 88), "It was their opinion that the woman *was not mentally competent*, in my judgment." Dr. Beling said that he and Dr. Washington were called to examine Mrs. Pfender with respect to her mental condition, and he examined her; that they had a conference with respect to signing a paper for her commitment (pp. 149, 150).

Dr. Beling says that the reason that he advised Pfender not to go to his home was because his wife had the revolver and "I was very much afraid that she might do some harm, and she had *notions* that her husband was not treating her right." He says that he tried to induce her to go to a sanitarium, "to take a rest somewhere, to go away, that she would quiet herself and get her nerves in shape. She was very much *upset*." He says that "she had *these ideas* that her husband—she was *obsessed* about her husband."

Dr. Washington says (p. 168) that, after he had made an examination of Mrs. Pfender, he thought *it was a case that would warrant her commitment*. The effect of Pfender's testimony is that he believed his wife to be insane, and both Dr. Beling and Dr. Dougherty and Mrs. Conklin testify to delusions of Mrs. Pfender.

It is admitted by Dr. Beling that he, Dr. Washington and Dr. Dougherty went to Mrs. Pfender's

house on October 1st (p. 150). They could not get in. Mrs. Pfender explains their visit. She says there were five men who came to the house about ten o'clock and they had two cars and there was a woman with them also (pp. 217, 218). She did not let them in. She spoke, however, to Dr. Beling and (p. 218):

"A (Continuing.) And Dr. Beling said, 'Well, Mrs. Pfender, we couldn't get here when I said we would.' He said 'We have been out to dinner and we didn't get through in time,' and I said, 'Well, I am very sorry; I cannot see you at this late hour of the night.' I said, 'I am all alone now. Had you come at eleven o'clock, when you said you would, I would have had someone here with me, but I have no one with me now,' and the housekeeper had gone up to her room—was on the way up there.

Q Did they leave then? A Yes, they did; they walked along the terrace, and I went and pulled the curtain up and watched them; I saw them get in the car and everything."

She says that she thought that she was going to be railroaded to an insane asylum and that she had been told by Mrs. Conklin, the housekeeper, that they were coming for that purpose (p. 216). Mrs. Pfender is corroborated with respect to this by the testimony of the housekeeper who was called for Pfender (p. 140):

"Q What did you tell her? A When?

Q That night, the night of October 1st?

A What night was that, October 1st?

Q Do you remember the night that something happened, as a result of which Mrs. Pfender left for Atlantic City the next day?

A When some people came there in the evening?

Q That is right? A Yes.

Q What did you tell her? A I said—she had been denying this, *and she was afraid*

that they were coming, and I said, maybe that was who was coming.

Q And she was in great fear, wasn't she?

A Yes.

Q And she ran upstairs? A She told me to go upstairs; she told me to put out every light in the house and go upstairs.

Q So that they would think there was no one there? A Yes.

Q Did you go up? A I went upstairs, yes, and got ready to leave.

Q To leave? A Yes.

Q You were going to leave? A I was going to leave.

Q Why were you going to leave? A I didn't want to stay under the circumstances."

and (p. 143):

"Q You knew, didn't you, that some papers had been signed with respect to Mrs. Pfender's sanity? A I don't know that I knew of any papers.

Q What did you know about that? A I knew that those physicians were coming there, and had been there once or twice, Dr. Beling and another physician, and, of course, Mr. Pfender never said anything, but she told me sometime that they were examining Mr. Pfender.

Q You were trying to help her to keep this quiet that you spoke of in October? A No, I was trying to help her."

and (p. 144):

"Q You had told her that the men were coming? A I said possibly that is why, she said that they wanted her to go to some private rest home and see if she couldn't be benefited, and I said perhaps that they were coming then."

Is it any wonder that, under the circumstances, Mrs. Pfender thought, as she told Dr. Beling subsequently, that "she might be railroaded" (p. 150). The excuse given by Dr. Beling for his

call there that night is preposterous. He and Dr. Washington had come to the conclusion that Mrs. Pfender was a subject fit to be committed to an asylum and yet his excuse was that he and Dr. Washington, two alienists, went to the house "to try and bring about a reconciliation between Mr. Pfender and Mrs. Pfender and try to smooth out her difficulties."

Nothing happened upon the night of October 1st which would warrant the doctors, or Dr. Dougherty in advising Pfender not to live with his wife. He left on October 1st because of the advice of the doctors and Dr. Dougherty, and Dr. Dougherty and the doctors now say that they gave him that advice because they thought that it was unsafe for him to live with her.

And yet Dr. Beling would have us believe that, on that night, after all that had happened, after knowledge on the part of all with respect to all of the acts which are now relied upon in this suit as cruelty, he went to the home of Mrs. Pfender for the purpose of effecting a reconciliation between the two.

The Vice-Chancellor says at the end of his conclusions (p. 54):

"After the separation the petitioner had the defendant examined by two very reputable physicians of the City of Newark for the purpose, evidently, of determining her sanity. (He had the physicians prior to the separation.) This fact is seized upon by the defense as an act of cruelty on the part of the husband, but in my judgment the proceeding was fully justified and prompted by the best of motives."

If the proceedings were fully justified, then the woman was a sick woman. The alienists produced by petitioner so testified and they go fur-

ther and say that she was in such a condition as that she should be committed. And Dr. Beling goes further and testifies with respect to what she did and her acts which he called "obsessions," otherwise delusions.

*And yet the Vice-Chancellor holds her to accountability as if she were a perfectly sane and normal woman.*

The fact is that these people had lived together in a perfectly normal way, highly respected by everyone with whom they came in contact, until 1924; in 1924 Mrs. Pfender became ill; she was nervous, hysterical; she suffered from sciatica; she was in the hospital in 1924; she became unable to keep up as she had before; her husband could not tolerate the effects of her ill condition; as time went on and she did not recover her husband became irritated; it was *her* fault, not nature's fault, that she could not recover.

Pfender's attitude is well expressed in his note written to her in May, 1926, when she was at Westport:

*"It is about time you realized that on your health depends your happiness and mine too. I have been at you for several years to take treatments and get yourself well before it was too late but you persist in neglecting yourself to try and keep this big house going, and you have not been successful."*

In the same letter, realizing her condition as confessed by himself in this letter, he brutally tells her:

*"Yes, I have changed and I feel as if I had aged ten years in the last year. If your home and your own stubborn ways mean more to you than anything else in life, keep right on as you are going."*

He demands that she sell the house and threatens her with what he will do if she does not. No woman, as concededly ill as she was, could stand this treatment. Then, for some reason he changes his attitude; he takes her up to Westport while he stays in New York; he keeps her quiet by writing her loving letters (p. 251, etc.); while she is at Westport she receives a letter which advises her with respect to the conduct of her husband; Pfender comes to Westport; she taxes him with his conduct; he confesses, if we believe his story, that he has been taking a young lady employee of his out to luncheons, dinners and on automobile trips, if we take her story to be correct (and that it is correct I think there can be little doubt from the testimony) that he has kissed and hugged the young lady but never had sexual intercourse with her. Such a shock was quite sufficient to bring about the condition of fainting, etc., as described by Dr. Harris (p. 157). It would shock a woman who was not ill as was Mrs. Pfender.

Pfender is intolerant with respect to her ill condition; he does nothing to allay her unjustified fears (if we assume them to be unjustified); he will not promise, and never promises, that he will break off all associations with the young lady in question; he does nothing to ease the situation except to have his wife examined by alienists, who come to the conclusion with him, and with Dr. Dougherty that she is insane; he takes steps to have her committed to an insane asylum; then it is realized that, if he is successful in this effort, it will mean that he will be for the rest of his life, so far as the law of this State is concerned, tied to his wife, so the idea is hatched that the proceedings be abandoned, that Mrs. Pfender be treated as if she were a per-

fectly well woman and held accountable for all of her acts and that an effort be made to secure a divorce from her upon the ground of cruelty and, if the decree of the court below be affirmed, that effort will have been successful.

Pfender's attitude towards his wife is well illustrated by what he said (p. 249)—

“Q When they told you that she had threatened to shoot you, did you ask her about it? A No, of course I didn't.

Q Why not? A Why should I?

Q To find out if it was true? A *Why should I believe her over someone else.*”

and at page 250—

“Q Then the only person who told you of a threat on the part of your wife to kill you was Dr. Dougherty? A Possibly the doctor had said that he had some such conversation. I cannot positively say, but it would be enough if Mr. Dougherty told me that.

Q But in any event you did not ask your wife? A I did not.”

When he started out on his direct examination, he attempted to say that his wife had told him.

This divorce was granted solely upon the testimony by Dr. Dougherty that, at *one* time, Mrs. Pfender had told him that she *had thought* of shooting her husband but that it was repugnant to her to kill anybody. There was no threat communicated by her, even to Dr. Dougherty, that she intended to kill her husband. The revelation made by her to Dr. Dougherty, if his testimony be taken at its face value, is with respect to some past thought on her part which had been abandoned.

### CONDONATION.

The Vice-Chancellor says, with respect to the matter of condonation (p. 54):

“The only testimony indicating any such condonation was that of the defendant and that I do not believe. The petitioner's testimony and attendant circumstances more than overcome the testimony of the defendant on this point.”

Let us examine the proofs. On the first day of the hearing Pfender, interrogated with respect to their manner of life after they came from Westport in 1926, testified (p. 90):

“Q You continued to live with her right up to the 1st of October, didn't you? A Yes.

Q And you occupied the bedroom with her? A At times, I did, yes.

Q And it is a fact, isn't it, that you had sexual intercourse with her up to September, 1927—1926? A I am sure I don't recall the date. I don't think it was as late as that.

Q But at any rate, it was after you had returned from Westport? A Yes.”

This undoubtedly condones any supposed cruelty which had occurred prior to their return from Westport. But what cruelty occurred subsequently? The record does not show anything except that, upon one occasion, Mrs. Pfender locked him out of her room, whereupon he broke in because he had made up his mind “it was time for me to assert my rights” (p. 86). Nothing occurred after the return from Westport except the communication to him by Dr. Dougherty of the statement made by Mrs. Pfender to Dr. Dougherty that, upon one occasion (date not fixed), she had stood over her husband, contemplating shooting him, and then had changed her mind because of her repugnance against killing anybody. This statement was communicated to Pfender in September and, as heretofore stated,

he made no inquiry whatever of his wife with respect to it, but continued to live in the same house with her. Mrs. Pfender says that sexual intercourse continued until within about three days of the date he left the house on October 1st (p. 215) and she tells a circumstantial story (p. 215):

“Q Were there any quarrels between you after that time, about September 28th until the 1st of October? A No; he kissed me goodby each morning when he went to business, and when he came home; things were apparently very quiet then.

Q You thought the thing had subsided? A Yes, I remember standing alongside of him, at the radio, and he put his arms around me, and I kissed him, as he often did; we were very affectionate to one another.”

Pfender realized the force and effect of his admission and took the stand at the close of the case (p. 246) and testified:

“Q Mr. Pfender, after you had information of your wife's threat to shoot you, did you ever have intercourse with her? A Positively not.

Q Up until the condition became unbearable did you continue your relations with her? A Yes.

Q And that was up to about what time?

A I should say between Labor Day and the middle of September.

Q And up to that time had you heard of her threats to shoot you, or had she told you—

Mr. Blankenhorn: What year?

Mr. Lum: 1926.

Q —or had she told you of standing outside your room threatening to shoot you? A No.

Q After she told you that did you ever live with her again as her husband? A No.”

On cross examination he says that he was told by Mrs. Conklin of some statements made by his wife, as to her wishing he was dead, “just after Labor Day.” His attention then being directed to the fact that he did not leave until October 1st, he makes it, “It must have been sometime during September.” He is then asked when it was that Dr. Dougherty told him of the statements and he fixes the date that Dr. Dougherty told him of the statements by the date that he ceased having sexual relations with his wife; and he fixes the date that he ceased having sexual relations with his wife by the date that Dr. Dougherty told him of the statements. He says (p. 247):

“Q When was it Mr. Dougherty told you? A It was the time—I cannot recall the dates; it was the time after which I had no further relations with Mrs. Pfender—sexual relations. I cannot tell you the date. I had no reason to recall dates; I was simply trying to straighten out my affairs.

Q That is as near as you can come to fixing the time when you were first told that she was going to kill you? A It was sometime between Labor Day and the time I ceased relations with her; I cannot tell you the date.

Q But you told me at the last hearing that you had had relations with her in September? A Yes.”

On page 248, he said:

“Q Didn't you lie down on the bed with Mrs. Pfender frequently as late as September, 1926? A *Not to the best of my recollection.*

Q And try to sleep? A No.

Q And try to calm her down? A *I did during September, but not as late in the month as that. We went to Westport on Labor Day and I tried my best right along—*”

He further said (p. 248):

“Q And have you discussed this testimony and this point with anyone since the last hearing? A No, I have not; I have had no occasion to.”

This is absurd. It is quite apparent that Pfender was called for the sole purpose of attempting to get rid of the condonation due to his continuance of sexual relations and that he had made up his mind before he went upon the stand that he must not admit sexual relations after he had been informed by Dr. Dougherty of the threat. He thought it was perfectly safe to admit such relations up to that time, so he persists in making the two events coincident, making the one dependant upon the other.

His conduct in continuing sexual relations with his wife indicates not only condonation but also that he had no fear. And the fact that he lay down with his wife and tried to calm her during September indicates that he thought that his wife *was ill*.

#### THE LAW.

This is a suit by a husband against a wife for extreme cruelty. While unusual, it is not unknown. It is true that the law permits absolute divorce for cruelty in either spouse and the law does not make a distinction between the sexes. But in determining what is and what is not cruelty, the fact that a person charged with the cruelty is a man or a woman must be taken into consideration, for what might be considered cruel treatment by a husband of a wife might well not be considered cruel treatment by a wife of a husband.

The general rule was stated by Vice-Chancellor Leaming in *Taylor v. Taylor*, affirmed in this court, 73 N. J. Eq. 745, 70 Atl. 323. After a review of the authorities, the Vice-Chancellor said:

“The rule in this state may be considered settled as follows: That to justify a wife in separating herself from her husband physical violence need not be proved, but such conduct of the husband must be shown as will reasonably convince the court that her life or health was in danger, or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, or that the conduct of the husband, if continued, would have brought about these conditions.”

The Vice-Chancellor then, in that case, considered the testimony which was to the effect that the husband exhibited extreme anger towards his wife, informed others that he had made a mistake in his marriage and would like to get rid of her, etc. The Vice-Chancellor said:

“The conviction brought to my mind is not that Mr. Taylor was a model husband. I think the proofs justify a conclusion very much to the contrary. I cannot help believing, under all the evidence, that Mr. Taylor fell very far short of the standard which the good of society demands of a husband in his treatment of a wife. But it would be a misjudgment upon all the testimony in this case, for this court to treat as proven the averments of the bill that Mr. Taylor was cruel, in the sense of the statute, toward his wife.”

In *Cavileer v. Cavileer*, 94 N. J. Eq. 160, 119 Atl. 374, this court had before it a case involving the question as to what would be extreme cruelty of a wife toward a husband. It stated the rule:

“‘Extreme cruelty,’ as used in our Divorce act, is such cruel conduct as endangers the safety of the person or the health of the ag-

grieved party, either actually inflicted or reasonably apprehended."

The court then considered the facts and it appeared, that one night about midnight when the husband came home the wife, being displeased and resentful of the husband's conduct, attempted to take a bottle away from him, whereupon he resisted and she pushed him over on a couch and held him; he called a friend to his assistance, whereupon she called her brother to her assistance and the husband was beaten. The husband stated that the wife scratched or hit his face. The court said:

"Even so, that single act of personal violence is not extreme cruelty, justifying abandonment of, and refusal to support, the wife, where, as here, the injury was slight and the act was committed under circumstances which do not furnish any reasonable apprehension that the continuance of cohabitation would be attended with further personal injury. *Cook v. Cook*, 11 N. J. Eq. 195."

The court further said:

"In such a proceeding as the present one it is always proper for the court to look at the attitude and conduct of the husband towards his wife since the commencement of the suit, for the purpose of giving character to the act of the husband in separating himself from his wife."

again citing *Cook v. Cook*, 11 N. J. Eq. 195.

In the case at bar there is no evidence of any physical violence. The case rests upon the allegation that the wife has unjustifiably accused her husband of adultery and that the wife has stated to Dr. Dougherty that at one time she had thought of killing her husband.

Vice-Chancellor Buchanan, in *Youmans v. Youmans*, 3 N. J. Misc. 576, 129 Atl. 122, held

that a wife was guilty of extreme cruelty where she accused her husband of undue intimacy with another married woman and left him and continued to remain away from him for more than two years without changing her conduct, but on the contrary, persisting in her accusations during her absence. The suit was by a husband against a wife for divorce for desertion and the question was whether the husband was obliged to seek the return of his wife. The court said, "No."

It has been held that unjust accusations of adultery made by a husband against a wife may be extreme cruelty, but it has likewise been held that that is not so unless the charge is wholly without foundation, *Stover v. Stover*, 94 Eq. 703, 120 Atl. 788.

There is a distinction, however, between a charge of cruelty made by a husband against a wife and a charge of cruelty made by a wife against a husband. Vice-Chancellor Bentley recognized that distinction in the unreported case of *De La Motte v. De La Motte*, when he said:

"The effect upon the mind of a refined woman thus insulted by her husband would be different and more serious than where the charge is falsely made by the wife against her husband."

But in the case at bar there is no proof that the wife made a charge of adultery against the husband. If there were such proof, the effect of the testimony of Pfender himself and of Dr. Beling is that he confessed the charge on August 7, 1926, at Westport. He did not confess any charge of adultery, nor did his wife make any such charge. She did complain and charge him with neglecting her and with undue intimacy

with the young lady in his office and, under the facts of the case, she was justified in making that charge. Any woman would feel herself so justified under the circumstances. Confronted, as she was, with a confession by her husband that her suspicions that he had taken out this young lady to lunches, etc., on automobile rides, while she was away at Westport and prior thereto, when, during the time that she was in Westport, her husband was writing her loving letters, and when her husband had written her brutally in May when she was ill and he knew she was ill: "Yes, I have changed," to the extent that the wife *made any charges* she was justified. Indeed, the Vice-Chancellor refused to consider the making of these charges as cruelty for he said that there was nothing proven in the case which he could hold to be cruelty without the culminating event which led to the separation of the parties on October 1, 1926.

But the culminating event was nothing except the statement by Dr. Dougherty to Pfender that Mrs. Pfender had told him that, at one time, she had thought of killing her husband, and the determination of Dr. Beling and Dr. Washington, alienists, that Mrs. Pfender was insane, that she should be committed.

Assuming the sanity of Mrs. Pfender, there was nothing whatever in the statement she made to Dr. Dougherty which would lead to a reasonable apprehension that she would kill her husband. Assuming that Drs. Beling and Washington are correct, there can be no cruelty, for the effect of their testimony is that she was so insane as that she should be committed. And, under such circumstances, of course, she could not be guilty of cruelty under *Smith v. Smith*, 40 N. J. Eq. 566 at p. 601, 5 Atl. 109.

In that case this court held that where the conduct was due to an insane delusion, yet it might constitute extreme cruelty in the absence of insanity generally, but the conduct in that case consisted of a charge of incest, jealous watchings, suspicious conduct, attended by acts of violence which the court said were slight.

This opinion was written in 1885.

The rule of responsibility, as stated in *Smith v. Smith*, 40 N. J. Eq. 566, seems to be contrary to the rule of the criminal law *State v. Spencer*, 21 N. J. L. 196, which rule is approved as recently as *State v. Noel*, 4 N. J. Adv. Rep. 854, 133 Atl. 274, for, if Smith, in the Smith case, were suffering from delusions as to his wife with respect to the subject matter upon which he charged her, he would be partially insane.

Being partially insane and suffering under delusions, the case of *State v. Spencer*, following McNaughten's case, applies,

"In the same case, the judges also expressed themselves of opinion that where a man commits an act, criminal in its nature, who labors *under any particular delusion*, as that every dog he sees in the street is mad, or any other particular delusion, his act as to criminality is to be judged of *as if the thing he imagines to be true were really so*. If a man is under the delusion that I am going to take his life, he would be exculpated in taking my life. But if he acted only under the delusion that I was going to carry off his property, or pick his pocket, he would not be exculpated for taking my life, for those facts, if true, would be no justification of his act, unless he was also under the insane delusion that he had a right to take my life for such an act. So you see, gentlemen, that although a man be partially insane, *the law does not exculpate him any further than the extent of his insanity.*"

Now, it is hardly conceivable that, under the civil law a man is to be held for his acts where he would not be held responsible under the criminal law, so that, applying the rule which is applied under the criminal law, if a husband or a wife suffered under an insane delusion as to the conduct of the other spouse, her conduct towards the other spouse must be judged as if that insane delusion represented the fact.

Now, Dr. Beling and Dr. Washington clearly indicate that they believe that Mrs. Pfender was suffering under an insane delusion with respect to the conduct of her husband toward other women. If that be true, her conduct must be judged as if her insane delusion represented the fact. Under such circumstances, she would be fully justified in making the charges against her husband with respect to his conduct with the employee in his office. There is no other case in this State in which the subject is mooted of which I have knowledge.

It is, I submit, going too far to say that a person should be held responsible for an act which is performed as a result of an insane delusion, although the person would not be held responsible for that act if generally insane.

Partial insanity is as effective a defense as general insanity if the act can be proven to be the result of the partial insanity. Vice-Chancellor Buchanan in *Youmans v. Youmans*, 3 N. J. Misc. 576, 129 Atl. 122, stated that the conduct of the wife in that case was "so illogical or irrational as to make it seem probable, or, at least highly possible, that her mentality was to some extent, and in that behalf, defective or deranged."

He says:

"It appears, indeed, that the husband himself believed that his wife was mentally de-

ranged, and made some attempt to have her examined and committed to the state hospital, but such examination was never, in fact, made."

The court, on the hearing, took the view that the proofs showed such mental condition was so highly possible an explanation of, or cause for, her conduct, as that the husband had not sustained the burden of proof upon him "if he fails to present evidence to negative that possibility; none such has been introduced."

Upon further consideration the court, upon the authority of *Smith v. Smith*, 40 N. J. Eq. 566 (at p. 601) because there was no suggestion that the wife was generally insane, held that the husband might have his decree.

Here again I repeat that it seems illogical that if the conduct was the result of the delusions due to partial insanity, the conduct would not be excused although it would be excused if there was general insanity.

In *Bethel v. Bethel*, 164 S. W. 682, 181 Mo. App. 601, the Missouri Court of Appeals said:

"A wife may be denied a divorce on the ground of infidelity and undue charges of infidelity concerning her made by her husband, where the husband at the time of making the charges was a nervous wreck and his mental condition was such as to render him unaccountable for his words and actions."

In *Wertz v. Wertz*, 43 Ia. 534, the said court "Cruel and inhuman treatment caused by the insanity of the party guilty thereof is not ground for divorce."

In *Kretz v. Kretz*, 73 N. J. Eq. 246, 67 Atl. 378, a suit for divorce on the ground of adultery, it was claimed that the insanity of the wife at the

time of the commission of the act was not a defense, relying upon *Matchin v. Matchin*, 6 Pa. St. 332. Vice-Chancellor Leaming said:

"I am unable to accept the views expressed in the *Matchin* case. *For a husband to cast off a wife for an act committed by her while insane impresses me as scarcely less than barbarous*, and as wholly inconsistent with the necessities arising from social conditions. If society has any demand to assert in such a case, it is a demand for the protecting care of the husband alike before and after the unfortunate act. \* \* \* I am unable to conceive how any court can properly give sanction to the views expressed in the case under review, and I must decline to recognize it as a binding precedent. No other court, so far as I have been able to discover, has given sanction to the views expressed in the *Matchin* case, while the very contrary has been established by the courts of several states. *Nichols v. Nichols*, 31 Vt. 328; *Broadstreet v. Broadstreet*, 7 Mass. 474; *Wray v. Wray*, 19 Ala. 522; *Mims v. Mims*, 33 Ala. 98; *Wray v. Wray*, 19 Ala. 187. See also *Yarrow v. Yarrow* (1892), L. R. Prob. 92, and *Hill v. Hill*, 27 N. J. Eq. 214. In 1 Bish. Mar. & D., Sec. 712, it is stated that the doctrine of *Matchin v. Matchin* has found no support."

The situation in the case at bar is quite different from that dealt with by Vice-Chancellor Buchanan in *Youmans v. Youmans*, 3 Misc. 576. It is true that in that case the Vice-Chancellor says: "that the husband himself believed that his wife was mentally deranged, and made some attempt to have her examined and committed to the State Hospital, but such examination was never, in fact, made." In the case at bar, not only did the husband believe his wife to be insane, but the examination did, in fact, take place by Drs. Beling and Washington and they united in finding that she should be committed and a

*certificate for such commitment was actually made out and there is no doubt there was an attempt made to execute it.*

And we have the adjudication of the court below that the conduct of the husband was *fully justified*.

But, aside entirely from the question of insanity as such, the physical condition of the wife must be taken into consideration. That she was physically ill from at least May, 1924, to the date of the separation is conceded; that she was nervous and hysterical must be likewise conceded. It is proven in the case by the husband himself and by Dr. Harris. The wife was ill and was entitled to consideration from the husband. Instead of getting consideration, all that she got was an exhibition of irritation that she should dare to be ill. She had reached the stage of life where it was likely to expect the menopause, and if she were not insane the conduct of her husband was sufficient to drive her insane. It may be that the husband was so mentally constituted as that he could not stand the irritation to which he was subjected by a woman who was ill, but that is no excuse for a divorce. The wife in her admitted condition of illness, whether insane or no, was entitled to his protection. She did not get it, and her conduct can be directly attributed to the manner in which she was treated after her husband realized, at least in 1926, that she was not getting any better. Let me repeat what this husband said in writing to this admittedly sick woman:

"*It is about time you realized that on your health depends your happiness and mine too. I have been at you for several years to take treatments and get yourself well before it was too late, but you persist*

in neglecting yourself to try to keep this big house going, and you have not been successful. \* \* \* Yes, I have changed and I have had good cause to change and I feel as if I had aged ten years in the last year."

He is extremely sorry for himself. He expresses to his wife nothing but criticism of the fact that she is ill. He could not have said in plainer words, "I married a wife to be well. Either you get well or I am through with you."

And then he brutally tells her, face to face, that, while he has had her safely packed away in the country and has been writing her loving letters, he has been going out with an employee of his office, taking her to dinners and luncheons and on automobile rides and, as she says, that he has hugged and kissed the young lady. And the testimony shows, I submit, that he did say that. And then he seems to be surprised that his wife should have broken down.

He does not come into the Court of Chancery with clean hands. The language of Vice-Chancellor Leaming in *Kretz v. Kretz*, 73 N. J. Eq. 246, 67 Atl. 378, in dealing with a much more serious case, that of adultery, is applicable:

"She was then, at the very least, in a mental condition where no one could properly expect from her the complete exercise of a rational judgment, although it appears impossible to say with positiveness that she may not have then known right from wrong."

And, as Chancellor Zabriskie said in *Derby v. Derby*, 21 N. J. Eq. 36 at p. 40:

"A party who has negatively violated a solemn contract in its two most vital parts, to love and cherish, and has only performed it in the last and least, to support, comes into a court of equity with an ill grace to complain of a positive breach by the party whom he first injured."

What will be conduct sufficient to bar a decree upon the doctrine of unclean hands depends upon the circumstances of each particular case. It depends upon the condition of the parties. This husband insisted upon treating this woman as if she were a well woman, whereas he knew and admitted the contrary. He professes that he did everything in the world for her, as does his witness, Dr. Dougherty. We search the record, including his own testimony, to find out what he did, and we find only an attempt to have his wife committed to an insane asylum.

Having confessed his going out with the employee of the office and reduced his wife to the point to which she was reduced, he did not do the obvious things, to wit, tell her that he would give it up; nor was he advised to. His witness, Dr. Beling, testifies (p. 153):

"Q Didn't she ask you to try to get him to stop? A Yes, she thought that she loved her husband and that she would be glad to have him give up all these things.

Q And did her husband, in your presence, promise her that he would stop? A No, sir.

Q Did you advise him to? A I tried to find out from him and all I found out was that incident; he *said* that he had tried always to do the best he could for her, but that *she was unreasonable*."

Perhaps it would have been unreasonable for her had she been a perfectly well woman, to expect that her husband would promise her that he would give up the association, but, unreasonable as she might have been while ill, it was obviously the thing for her husband to do if he cared anything whatever for her. He did not. On the contrary, he chose to treat her thoughts with respect to his association with this employee as *insane delusions* and took steps to have her

committed to an insane asylum, and went to the point of obtaining a commitment; and then, realizing that if he proceeded and succeeded he would be bound forever, for his own purposes he changes his tactics and elects to consider her as perfectly sane so that he may get a divorce from her on the ground of cruelty. When it suits his purposes he treats the conduct of his wife as due to an insane delusion, and when it suits his purposes he elects to treat his wife as perfectly normal. He cannot, I submit, so juggle with the obligation which he assumed at the time he married her twenty-four years ago.

It is respectfully submitted that the decree below should be reversed with directions to enter a decree dismissing the petition for divorce and granting the wife separate maintenance and support.

Respectfully submitted,

MERRITT LANE,  
Of Counsel with Appellant.

115 MAY. 1. 1928

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

*Between*

LILLIAN E. PFENDER,  
*Complainant-Appellant,*

*and*

CARL D. PFENDER,  
*Defendant-Respondent.*

*On Bill for  
Separate  
Maintenance.*

*On Petition  
by Husband  
for Divorce  
on Ground of  
Extreme  
Cruelty.*

*Between*

CARL D. PFENDER,  
*Petitioner-Respondent,*

*and*

LILLIAN E. PFENDER,  
*Defendant-Appellant.*

*Decree Dis-  
missing Bill  
of Wife and  
Decree Nisi  
on Husband's  
Petition for  
Divorce.*

*Heard Below  
Before  
BERRY,  
V.-C.*

*Appeal of  
Wife.*

### BRIEF FOR PETITIONER-RESPONDENT.

The pleadings and causes of action are correctly and fully set out in the brief for appellant. The rest of the brief can, we feel, aid this court but little. It comprises over thirty pages of printed matter, the major part being

extractions from the testimony. The testimony itself in the book, in full, can be read in a little more time than the brief of the appellant, and it will correctly and accurately present a very vivid picture, whereas, we feel the extractions in the brief of the appellant present at best a misleading account and untrue picture.

The record itself is so eloquent of the case made out and sustained by the petitioner-respondent together with the opinion of the Vice-Chancellor (pp. 51-54) which accurately and definitely cover the impression of the Court created by the testimony given, that we will not reply at any length.

We call attention in the first instance to the fact that the Vice-Chancellor before whom the case was tried, found the testimony of the appellant, utterly unsatisfactory; and believed in and was convinced by the case of the petitioner-respondent. In this he was certainly most fully justified.

The bill of complaint, paragraph seven, filed by the wife for separate maintenance, was filed at a time when she was receiving vastly more than any court could allow her—a sum larger than she was possibly entitled to (see affidavit of the husband, pp. 32, 27). This issue was found on the preliminary application against the wife (see order denying alimony, p. 34). The wife shows her utter unreliability in every turn and in every way as well as her vindictiveness toward her husband. In her effort to mulct her husband at the outset of the litigation, she charged that he was the owner of the house at 364 Ridgewood avenue, Glen Ridge, worth \$100,000.00; that he was the owner of property at Westport, Lake Champlain, unfinished but costing in its present state over \$50,000.00. She charged that he was

receiving \$300,000 a year income; that at the time of his desertion he employed three servants, a laundress, gardener, cook and butler; that he owned two Cadillac automobiles, a horse, etc., etc. (p. 3). The facts definitely proved by Mr. Pfender as well as by his partner, William McKinney (p. 112, l. 20) show that the husband drew \$12,500.00 a year and could draw nothing further without the consent of the partners; that the business at the time was being run at a loss, but that nevertheless he was paying his wife \$125.00 a week and permitted her to live in the property at Glen Ridge, the upkeep of which he covered.

The wife of course knew that instead of the husband being the owner of the properties which she alleged were worth over \$150,000.00 that he had given her one-half interest in both of these properties by deeds which were of record and that he had done so despite the fact that she had contributed nothing whatsoever and that in establishing these properties in which he had given her a joint interest he had drawn down his participation in the partnership and had no stocks, bonds or anything else in the world excepting an interest in his mother's estate amounting to a very few thousand dollars, producing little income and not sufficient for carrying charges.

The husband in his answer (p. 8) sets forth the true facts in full; and at the end of six months from the time of his leaving the house because of his wife's cruelty and unnatural disposition, he filed his petition for divorce (p. 16).

The wife in a counter-claim charged the husband with cruelty which however she never sought to prove nor offered any evidence whatsoever with reference thereto, except her own utterly unsatisfactory word.

The conclusions of the Vice-Chancellor are set forth on pages 51-53, and these conclusions while brief will be shown after an examination and review of all the testimony to accurately be the result of an unequivocal impression made upon the Court by the witnesses and by the parties themselves of the extreme cruelty of the wife. As a matter of fact at the end of the case the Court was ready to dispose of it but decided to read the exhibits which he did; also, he received an exhaustive brief from the other side and was "of the same opinion still" (p. 53, l. 3). The husband proved that shortly after the marriage, the wife began to find fault with him, at times got very angry and made things very unhappy for him; that she made trouble with members of his family; tore up pictures of his family in his room as far back as 1912; was furious because he took one of the men from the store on a fishing trip to Greenwood Lake (p. 61, l. 15). On this occasion she locked her husband out of the house and he was compelled to stay in the garage for several hours. She broke the fishing rod of which he was very fond. In 1923 he planned a fishing trip to Maine and the wife protested his going; tore up his fishing license and created a considerable scene (p. 62, l. 25 and p. 63). While he was gone the wife took a check which the husband had signed in blank and attempted to get \$2,000.00 on it. The check was not paid however because the amount was not in the bank (Ex. 36, l. 28). The incident is covered fully in the testimony of the parties. The testimony is strongly corroborative of the incident (p. 186 top). The matter of the \$2,000 check is covered (p. 64, l. 30).

The caliber of the wife is clearly indicated by her attack on her husband in the taxicab when

she struck him in the face, hit him with her fist as hard as she could and caused him much pain (p. 156, l. 19). The husband had done absolutely nothing to incite this abuse nor to provoke it (p. 66, l. 28).

In the summer of 1924 the wife was frightfully and unjustifiedly angry because the husband had taken the pastor out in a boat (p. 64, l. 40). This incident is very fully covered by Mr. Dougherty the rector (p. 123, l. 20) and by Mr. Henckel (p. 69, l. 75) and this incident also shows what type of woman this was, and that her anger and abuse of her husband was based on no cause other than her own lack of discipline and cruelty and a desire to wreck her violent temper and anger upon her husband.

Mrs. Pfender was violently angry and very unkind in her talk against her husband's sister and family (p. 75, l. 30). The sister was so alarmed and pained by Mrs. Pfender's attitude that she left before breakfast the next morning (p. 76, l. 10). Petitioner never used abusive language toward his wife or treated her unkindly (p. 76, l. 28), but her treatment got worse as time went on. She found more fault all the time with her husband and made things very uncomfortable and unpleasant; she was very critical and unkind in her remarks (p. 76, l. 35).

In 1926 she accused her husband of riding in the park with a woman. Said she hired a detective to follow him. Saw him meeting women up there constantly (p. 77, l. 27).

The husband's efforts to appease his wife were unsatisfactory (p. 78, l. 10).

Easter 1926 he bought her flowers which she refused to wear, and on their wedding anniversary when he sent her flowers he found them thrown on the front door steps. He was locked out of his room May, 1926, and in getting in, his hand touched his wife who immediately called the police (p. 79, l. 25).

In August his wife was informed that the husband had taken a meal with a woman employee and ridden in an automobile with her. He had not been with her to any place which was not public and where there were not others present, but from that time, August, 1926, the wife persistently nagged and found fault with the husband (p. 79, l. 35).

In September, 1926, the wife told the husband that she had stood over him with a revolver while he was asleep with the intention of killing him, but she decided finally not to. Her husband's health began to break. He could not sleep, was nervous. He was afraid she might shoot him through the door. He changed the position of his bed for fear she might shoot him through the door. He did it the last several nights that he continued to live in the house (p. 80, l. 20). Her conduct affected his health very seriously. He was nervous, lost weight and could not sleep. He was never in such condition (p. 81, l. 20). There was no other cause except the wife's treatment (p. 81, l. 22).

He left the house October 1, 1926, and began to gain weight right away and at the time of the trial he gained ten pounds and was in the best condition he had been in since marriage (p. 81, l. 30).

He was informed by others of conversations they had had with his wife and which resulted

in a conference with his attorneys and then consulted Dr. Beling and Dr. Washington.

Q Were you at that time trying to have your wife adjudicated insane? A Absolutely no.

The wife was represented by Edwin B. Goodell of Montclair. Attempt was made to show that the husband desired his counsel to arrange with Mr. Goodell for payment of the wife's expenses at a sanitarium. Her counsel blocked the effort (p. 82, l. 25).

The husband did everything he could for peace and harmony in the household, but his efforts seemed only to further increase the vindictiveness of the wife. He went the limit but could not continue it further (p. 84, l. 14). The wife accused the husband of staying out all night.

Mr. Pfender often had to make his own bed where he could and sleep there when the wife was locked in her room (bot. p. 85). He never mentioned the name of his sister or of his family when he could avoid it (p. 8, l. 20).

An attempt was made to show the husband's cruelty in driving home from Westport—three hundred miles—in an automobile in one day. However, the husband wished to stop but it was the wife who wanted to keep going and would not stop for dinner (p. 90, l. 20). This testimony is not contradicted.

After the wife threatened to shoot the husband he roped the door so that no one could get in (p. 92, l. 12). His health began to be seriously affected in 1926 (p. 93, l. 15). In addition to providing the wife with magnificent homes the year round—at Glen Ridge and Westport—in May the husband started to give her \$100.00 a month in addition to which he was paying all

bills (p. 94, l. 2). The building of the house at Westport was stopped in May, 1926, because of the wife's persistent accusations that the husband was unfaithful to her and the episode about the roses at Easter (p. 94, l. 32). The husband had been very solicitous about the wife's health and had spent fortunes gladly on doctors (p. 94, l. 6). In September he was advised by his friends that he could not continue and go on as he was; that he was a wreck and would go to pieces unless he got out. He then saw Dr. Beling and Dr. Washington in an effort to get the best advice he could (p. 97, l. 20). His condition was most apparent. He could not sleep.

The wife had accused the husband of being insane and her counsel goes into the fact that Mr. Pfender's mother died in Bloomingdale out of her mind (p. 98, l. 10). This issue could be injected in the case for no other reason than to justify the wife's charges for it is merely injected and then abandoned.

Mr. Pfender's friends advised him to leave. After the wife had threatened to take his life he had to move his bed to keep out of the way and his health broke down from the nagging and constant friction. He could stand it no longer (p. 98, l. 30). He told his partners and Mr. Dougherty about the situation (p. 99, l. 18). On October 1st he did not return. He had been through so many years of the thing and it got worse and worse as time went on with the result that he was at his wits end. For years he had tried to live peacefully but his wife's treatment made success in that aim impossible (p. 83, l. 15). Immediately after he left his health picked up. Organically he was well, but he had become extremely thin and nervous (p. 8, l. 32).

Mr. Dougherty, the rector, called at Mrs. Pfender's request about the end of September (p. 105, l. 12). Mr. Pfender did not know who was there until he appeared. Mrs. Pfender and Mr. Dougherty had a talk on the lawn and then came into the house together (p. 105, l. 30). Mr. Pfender has never been out at night with any woman at any time; had always been faithful and never stated to the contrary to his wife. There had never been any intimacy with the young lady who was encountered in the park. He had never seen her since (p. 107, l. 1). This testimony as will be seen is corroborated by the bulk of the testimony. Every important statement of the wife is contradicted by practically every other witness in one respect or other. The husband complained that the wife sought to injure him and his business and deprive him of his friends. This is corroborated by the partner Mr. McKinney. We may here give a picture of Mr. Pfender as presented by various witnesses.

"Mr. Pfender was a very conservative type of man, an absolute gentleman in every way, very gentle and peaceable" (p. 109, l. 10). (William McKinney.)

"I found him to be always a genteel type and exceedingly good natured, easy to be entreated \* \* \* Very generous disposition, \* \* \* I have never seen slightest evidence of either brutality or profanity \* \* \* Very high standing much respected by the people who knew him." This testimony was given by the Rector Mr. Dougherty (p. 113, l. 40; p. 114).

"I never saw a lovelier man in his home than Mr. Pfender \* \* \* All times." This testimony by Ida Conklin (p. 138, l. 30).

"I should say very kind and considerate in his treatment of all persons he came in contact with, as far as I observed." Testi-

mony of James Ross, Architect of the West port house. Witness for Mrs. Pfender (p. 166, l. 10).

“Q You considered him a fine Christian gentleman? A At that time, yes.

Q Nothing that you had ever seen of him has caused you to change your mind, a hair's breadth, has it, sir? A I don't know what has happened, sir, since he left.

Q Nothing that you have ever seen is my question, has caused you to change that view? A Not that I have seen” (p. 174, l. 14). Rev. E. S. Carson, Rector at Ridgewood, called by the wife.

In spite of the sinister, malign, wicked jealousy and bitter attacks the husband continued every effort to reconcile himself to living with his wife until however, his health became so essentially impaired and the threats upon his life so dangerous that he was compelled to separate from her. The course of conduct in which the wife persisted with its wearing effect gradually broke down the husband's power of resistance so that it was utterly impossible for him to continue any longer.

Mr. Dougherty, a man of the highest type, clergyman of Christ's Church, Bloomfield and Glen Ridge, knew the parties very well and had been acquainted with them both for several years (p. 113). His appearance and manner in testifying stamped him as an outstanding, strong, fine man. Nevertheless an insidious attempt is made to attack his testimony in the brief filed in this court, because forsooth in his affidavit on p. 41 Mr. Dougherty says that when the wife showed him a revolver in September of 1926, he took it from her and still has it. He said, when his attention was called to this that it was technically incorrect; which was true indeed. If he had said

that she had showed him the revolver but that he later received it from the gardener and still had it, the affidavit would have been technically correct but no tweedledum or tweedledee distinction could have been of less moment or significance in this case and the very desperateness of our opponents case is shown by the avidity with which this insignificant detail is seized upon. There can be no possible question in this case whatsoever in the mind of any one who will read the record nor of the Court that heard the case, but that the wife had at least three revolvers and that in the midst of telling Mr. Dougherty of her threats to kill her husband and of the intent she had to do it, that she left the room and brought a revolver to show him; that she kept the revolver and later gave it to the gardener, who before he sailed abroad gave it to Mr. Dougherty who had it at the time he made the affidavit. These are the facts and we think that small consolation can be found by our opponents, in the fact that the substance was too briefly summarized in a hasty affidavit for use on an abortive effort of the wife to get money to which she was not entitled.

In the talk held the latter part of September, when Mrs. Pfender sent for Dougherty, they were on the lawn for an hour, while Mrs. Pfender was telling the rector of her husband's immorality and brutality (p. 114, l. 30). He then talked with Mr. Pfender and told him what the wife had said. This very greatly disturbed Mr. Pfender's state of mind (p. 115, l. 28). Mr. Dougherty had a real affection for both parties and felt that he might be of use in quieting down an intolerable and disturbed situation. He urged a tolerant attitude, intending to get them both in a good frame of mind to affect a reconciliation, but Mrs. Pfender was in a state of hatred and violent dislike of

her husband (p. 116, l. 10). She said he was running around again with some woman.

He left Mrs. Pfender when there seemed to be no possibility of reconciliation. The situation seemed to have gone to an intolerable state and he urged the parties to consult lawyers, for Mrs. Pfender said she could not live with him (p. 116, l. 20). Mr. Dougherty testified that Mr. Pfender had said that he couldn't live with her any more and he thereupon advised an amicable and private adjustment. Mr. Pfender agreed. Mrs. Pfender did not. On one occasion she said she didn't want any of his money and on another said that she thought he ought to pay, and pay well (p. 168, l. 35). She said that she had stood over him, or near him, with the thought of killing him, but that the thought of taking a life was repugnant to her. She then spoke of wanting to show him something and got one of the revolvers that was marked in evidence (p. 116, l. 10).

Dr. Beling later gave Mr. Dougherty another of the revolvers (p. 117, l. 38). It was in the midst of the conversation when Mrs. Pfender said she had been tempted on a great many occasions to shoot Mr. Pfender, that she said "wait a minute" and then got the revolver (p. 118, l. 20). Mr. Dougherty received the revolver from the gardener a few days later (p. 119, l. 25).

The conditions had a very deleterious effect upon the health of Mr. Pfender. He was thinner and nervous and he was under apprehension. After the first of October, this all changed. A very definite and immediate improvement in his health was observed (p. 120, l. 20).

Mrs. Pfender, as later will be shown, testified to Mr. Dougherty, her husband and other men

coming to take her and put her in an insane asylum. This is all denied fully (p. 121, l. 1, etc.).

Mr. Dougherty knew, of his own knowledge, that Mr. Pfender rode in the park on horseback alone or with one or two male companions, practically always (p. 122, l. 10). He tried to reason with the wife as to the nature of Mr. Pfender and to convince her that he was a good man, as he was. Mr. Pfender informed the Rector of how he had arranged his bed so that he could not be shot in the night (p. 122, l. 30). He corroborates the testimony of Mr. Pfender as to his wife making fun of his personal appearance (p. 122, l. 38). This the wife denies.

The incident of the towering rage at Westport in 1924, is covered fully (p. 123, l. 20). The incident arose over a small boat. This is confirmed by other witnesses, all of whom, according to the testimony of the wife, lie. The wife also denies that she ever had any revolver at Westport which she showed to Mr. Henckel, who took the cartridges from her (p. 224, l. 25). Mr. Henckel covers the story very fully (p. 72, l. 15). He said he took the cartridges from her. She gave them to Mr. Dougherty who threw them into Lake Champlain (p. 125, l. 10). The wife told the Rector that she had bought the revolver to shoot Mr. Pfender with (p. 125, l. 32). She told him that she couldn't stand it any longer.

This Rector and friend of both parties knew of nothing that Mr. Pfender could have done which he did not do. His cross examination rather strengthened the situation. Mr. Dougherty makes it clear that he tried to boil down to testimony of a few words, the result of a number of days of very violent conversation (p. 120, l. 10). Mr. Dougherty urged Mr. Pfender to

leave his wife (p. 130, l. 28). The extreme state of the situation becomes apparent immediately by this. It was the advice of the Rector of both parties—an Episcopal Rector, a man of long service in his church, who did not consider it safe for Mr. Pfender to continue to live with his wife (p. 130, l. 32). He was so worried, his health was breaking and he was afraid that Mrs. Pfender would shoot her husband with a revolver (p. 130, l. 10).

The next witness was Mrs. Ida Conklin, a servant, from June, 1926, to the end of the year. Mrs. Pfender informed her that she thought Mr. Pfender was trying to poison her; that she wouldn't go out on the lake with Mr. Pfender because she thought he was going to drown her up at Westport. She said this on more than one occasion. She thought he was crazy (p. 133). Mrs. Pfender told Mrs. Conklin that her husband was going with other women and that he had given a woman \$2,500 a month for two years; that he was taking a woman to hotels and places in New York—different places; that he went there with a girl and stayed with her all that night. She said several times that this would end in the Hall-Mills case. The witness saw the revolver—the one she gave Raphael. She identified the small one—Exhibit C. 1 (p. 134). She recognized the revolver that Mrs. Pfender showed Mr. Dougherty as one that she had received when it came from New York (p. 135, l. 10). Mrs. Pfender gave the revolver C. 1 to Raphael, the gardener, three or four days after Mr. Pfender left the house (p. 135, l. 25). Mrs. Pfender told this witness that she wished to God that Mr. Pfender had died. She prayed that he might be killed by an automobile or a train (p. 136, l. 20, etc.).

The defense takes a straddling position on the question of the defendant's mental state. It seemed to be argued, on the one hand, that when Mr. Pfender, startled and astounded by the threats of the revolvers and his wife's intemperate anger, on the advice of friends and attorneys, took counsel with two of the best mental specialists he could find in this section, that he was guilty of cruelty. At the same time, we find the brief of our opponent dealing with the subject of insanity and the question of responsibility as though insanity had been presented in this case and proof had been made that the wife was insane.

Mrs. Pfender's counsel called David Berner, a doctor from Atlantic City (p. 145), for the purpose of showing that Mrs. Pfender was sane. Being advised by the Court that it was a two-edged sword, he withdraw the witness (p. 146). He then called Dr. Beling.

Dr. Beling testified to the fact that he had been consulted by Mr. Pfender; that he had examined Mrs. Pfender first on October 1st, which was the date Mr. Pfender left—the date the doctor advised him to leave. He again saw her on October 5th (p. 147). Much is said in the appellant's brief and throughout the testimony on the matter of what these doctors had in the way of commitment papers. No one seemed to have a very definite recollection, but it was undoubtedly the fact that Mr. Pfender signed whatever was necessary to authorize these doctors to make the examination which he desired made and after the making of which he and his attorneys continuously advised with the attorneys of Mrs. Pfender, urging that she go to a fine, excellent sanitarium where she could get rest and treat-

ment. The only effort to commit her, arises from her imagination.

In her testimony, she speaks of a night raid with two doctors, Mr. Pfender, another man and a woman (p. 217, l. 35). All of this is of course absolutely negated by all of the witnesses.

Dr. Beling said that Mr. Pfender signed no application to his knowledge (p. 148, l. 38); that he didn't see any paper, etc. (p. 149, l. 10). He covers the call at Mrs. Pfender's (p. 150).

On cross examination Dr. Beling stated that he told Mr. Pfender not to go home, as he was afraid that Mrs. Pfender might do him some harm. First she denied that she had a revolver or that she had given it to the gardener and then she admitted that she had given the revolver to Dr. Beling (p. 151, l. 30).

Mr. Pfender tried to do the best he could (p. 152, l. 8). The doctor advised the sanitarium and rest—advised Dr. Prout's Sanitarium in Summit. He tried his best to advise her to get her nerves in shape as she was very much upset. He knew nothing of any attempt to railroad the witness (p. 152, l. 28). She was full of complaints about her husband.

Harold Simandl was then called to tell about his having had "what you might call a flash" of a paper (p. 155, l. 4), and that it was a commitment, signed by Dr. Washington.

The brief of the other side criticizes Mr. Pfender's counsel for not denying this statement. We are willing to rest it entirely upon the denial of Dr. Washington. His testimony appears (p. 167). He denies having signed any such paper (p. 168, l. 13). He makes it perfectly apparent by his whole testimony that the situa-

tion was just as Mr. Pfender and Dr. Beling testified; that they were alarmed at the intense excitement of the wife; that an examination was made for the purpose of determining what had best be done with and for her. Dr. Washington's testimony appears in full (pp. 167 to 171).

The insincerity of Mrs. Pfender's counsel in attempting to inject a lack of responsibility, because of her insanity, is shown on page 156, where the witness Simandl testifies to having Dr. Dowd examine Mrs. Pfender and having been assured that the woman was perfectly sane (p. 156, l. 10).

James Ross, called in behalf of Mrs. Pfender, testified that after the incident in August at Westport, Mrs. Pfender had threatened to return home and bring suit for divorce (p. 162, l. 34). The utmost that Mr. Pfender had stated to his wife was that he had taken a lady in an auto to a restaurant and probably to the theatre (p. 163, l. 1). The next day Mrs. Pfender threatened to bring proceedings for divorce (p. 163, l. 15). The three of them returned to the city by motor the following Monday (p. 164, l. 8). This witness told Mrs. Pfender that her impressions must have been wrong in reference to what she thought Mr. Pfender had said to her (bottom p. 164). Mr. Pfender distinctly told his wife that there was nothing wrong on his part (p. 165, l. 12); that he merely had taken dinner with some lady and an automobile ride in public places. He said distinctly that night that there was no wrongdoing (p. 165, l. 22). He said that there was nothing serious in the relationship—nothing wrong in their relationship (p. 166, l. 23).

Dr. Halsey was called to show Mr. Pfender's cruelty. He was a doctor who called when Mrs.

Pfender was ill during the daytime and Mr. Pfender was not there. We can see no significance to his testimony. At this time Mrs. Pfender's son was a part of the household and she had a sister who lived in Montclair (see p. 7 of Mrs. Pfender's bill of complaint, as to servants).

Mrs. Pfender was then called. She denied ever breaking the fishing rod; denied tearing up the fishing license. Her long, rambling narration of this left a conviction that she was romancing or worse (p. 182, l. 10). We find one witness saying that she was very generous in her church contributions and work. She said, however, that her husband wouldn't let her join in church affairs. She denies ever hitting her husband in the taxi (p. 187, l. 22; p. 188, l. 20). Her counsel was trying to hold her down as much as possible (p. 189, l. 25). She says she never had a gun at Westport (p. 191, l. 33). She thinks that Mr. Henckel lied about it because he was a German and she was English (p. 224, l. 30). At page 192, it appears that she was testifying in a manner to convince any impartial person that Mr. Henckel's story was absolutely true, and that her denials were not believable. She denies that she was going to burn the boat (p. 192, l. 22). Her hopelessly lame explanation about burning the boat appears at the bottom of page 192 and top of 193. She justifies her conduct on one occasion because she says that Mr. Pfender's sister and he were talking behind her back (p. 194, l. 10). The sister denies this very definitely (p. 241, l. 20). She goes on and testifies to Mr. Pfender's mother's death at the Bloomingdale State Insane Asylum (p. 196, l. 20) and says that she was absolutely out of her mind (p. 196, l. 30). We wonder if this is by way of justification of her charges that her husband was insane?

She denies that she ever made fun of her husband's personal appearance (p. 197, l. 20). Her attempted explanation of this is grotesque (p. 197, l. 32). She denies that she accused him of riding in the park with women, but her next answer sets forth her state of mind on the subject. At page 198, line 3, she says that it hurt her very much to think that he was doing such things and that she told him so and cried (p. 198, l. 20). She admits locking her husband out of the room in May of 1926, and says it was because he threatened to strike her (p. 199, l. 5). She denied that she had told Mr. Dougherty that she ever stood over her husband and threatened or contemplated killing him (p. 197, l. 8). She confirms Mr. McKinney's testimony (p. 208). She admits that every night when her husband came home, the subject of Miss Haas was up for discussion (p. 209). The wife cried every night (p. 209, l. 27). She says that she saw the doctors the third week in September (p. 211, l. 5). The doctors of course were not consulted until the first of October. Dr. Beling's records are definitely clear as to this. She fixed her own terms; said to her husband "When you are ready to give this girl up and discharge her from your employ, then I am ready to listen to you and be reasonable about the matter, but until then I refuse to go up (to Westport) with you" (p. 211, l. 25).

She admits that she saw her husband's door handles roped and asked him about it (bottom of p. 211). She falsifies about the revolvers (p. 212), and then admits that she bought a revolver in September, 1926, because there were burglars in the neighborhood (p. 213, bottom). She gave it to the gardener (p. 215, l. 1). Asked if that was the only gun she ever had in the house, she

answered "I guess so" (p. 215, l. 10). She says that Mrs. Conklin told her that Mr. Pfender had told her (Mrs. Conklin) that he was in love with this girl; that he wanted to get her in an insane asylum and then he was going to have a grand time with his "peaches" (p. 216, l. 30). The testimony of Mrs. Conklin and the uncontradicted picture of the character of Mr. Pfender is the best answer to this.

She tells about seeing the party that was to "railroad" her (bottom p. 217, and top p. 218). "There were five men and some women standing all together."

The cross examination starts (p. 222). She begins with contradicting, under oath, her other statements made under oath. She says that she believed her husband guilty of misconduct (p. 3 of her answer and counter-claim). At the bottom of page 223, she says she did not believe it. She doesn't seem to know whether she believes it or not. But it is to be noted that she made her husband suffer acutely because of her unjust beliefs, in any event. She denies statements made by her own witness, Mr. Ross (p. 224). She says she never had any trouble with Mr. Henckel but thought he lied, because he was a German (p. 224, l. 20). She goes on to say that all he said about the revolver and cartridges was false. She says that her Rector testified falsely. She denies that she told the gardener that she wished her husband was dead. The gardener testifies that she did so tell him (p. 237, top).

She then wants us to believe that she never had but one gun—the thirty-six. She is then forced to admit that since the litigation had been on, she had bought another gun in September 10th of last year (p. 225, l. 30). The price paid

for it is even developed (p. 228). She is then questioned about why she falsified as to her husband owning the property, when she knew of her own interest in it (pp. 226-229, l. 27). She denies that she testified as to Mr. Pfender's mother being in an insane asylum. She wants us to believe that she went to Mr. Goodell about Labor Day, 1926, about her will. This woman, who had never received but \$10 a month, had several hundred dollars in the bank (bottom of 230, top of 231). The incident "about this woman" came up every night from the time the husband reached home (p. 232, l. 13).

She then attempts to testify to a situation to establish condonation. She stated before that her husband forced her. She attempts then to say that she had the last revolver because the gardener tried to assault her (p. 233). The gardener denies this emphatically (p. 235). Mr. Pfender denies positively that he ever had any relations with his wife after her threats to shoot him (p. 246, l. 10). It is inconceivable that a man whose life had been threatened and who was sufficiently apprehensive to rope himself in his room at night and change the position of his bed so that he wouldn't be shot through the door, is not telling the absolute, sole and complete truth on this subject. And he is further borne out with absolute conviction by the testimony of persons of undisputed truth and veracity.

The subject of condonation is covered in full in *Jones v. Jones*, 18 N. J. Eq. 33; *Young v. Young*, 94 N. J. Eq. 155; *Rapp v. Rapp*, 67 N. J. Eq. 236. Condonation must of course be pleaded as an affirmative defense and pleaded with certainty, if it is to be relied upon as a defense. *Delaney v. Delaney*, 69 N. J. Eq. 602; *Warner v. Warner*, 31 N. J. Eq. 225; *Fuller v. Fuller*, 41

N. J. Eq. 198. Not one word is set up in the defendant's answer suggesting any such defense as condonation, because of course there was not the slightest basis for it.

The cruelty established in this case is vastly more severe than in the case of *Smith v. Smith*, 96 N. J. Eq. 59, where the Court found corroboration from the excited appearance of the petitioner, and allowed a decree. Corroboration is sufficient if it satisfies the conscience of the Court that the petitioner's testimony as a whole is credible and worthy of belief. *Garcin v. Garcin*, 62 N. J. Eq. 189; *Ruff v. Ruff*, 126 Atl. Rep. 863; *Lasker v. Lasker*, 91 N. J. Eq. 352; *Orcutt v. Orcutt*, 94 N. J. Eq. 303. A clear case of cruelty was made out by the petitioner. The defendant's self-contradicting, equivocal attempts at excuses in itself tended overwhelmingly to corroborate the petitioner and ample corroboration, of course, arose from all of the other witnesses.

To seek to compel a husband who had submitted to what this man had submitted to at the risk of his life, against the advice of his friends, his Rector and his doctors, to continue to live with the woman who was solely responsible, would be a travesty. It is inconceivable that the wife could live with this husband or that her appeal could really be in good faith. She is the possessor of many thousands of dollars of property that she has received from him. She is evidently laboring under the delusion, as set forth in her papers, that her husband is inconceivably wealthy, making \$300,000 a year, instead of \$12,000, all of which she is receiving. If her mind was clear in this respect and on this subject, we think that this litigation would long since have been ended.

Substantial justice was done. The Vice-Chancellor who had heard the testimony and has seen the witnesses, had no difficulty in dealing with the facts as well as the law and it is respectfully submitted that the appeal should be dismissed.

LUM, TAMBLYN & COLYER,  
Solicitors for and of Counsel  
with Petitioner-Respondent.

RALPH E. LUM,  
Of Counsel.